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DEPARTMENT OF JUSTICE APPROPRIATION AUTHORIZATION ACT FOR 1986

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

THE OVERSIGHT OF THE DEPARTMENT OF JUSTICE AUTHORIZATION FOR FISCAL YEAR 1986

MARCH 26, 1985

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DEPARTMENT OF JUSTICE APPROPRIATION AUTHORIZATION ACT FOR 1986

TUESDAY, MARCH 26, 1985

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:34 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Biden, Grassley, Metzenbaum, Specter, McConnell, Heflin, and Leahy.

Staff present: Deborah Owen, Scott Green, Lisa Hovelson, Neal Manne, Eddie Correia, Arthur Briskman, and John Podesta.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

This morning, the committee will take testimony on the Department of Justice authorization for fiscal year 1986. Last year, as in 1983, the Department submitted legislation with two basic purposes.

First, it authorized appropriations for fiscal year 1985. Second, it would have enacted into the United States Code various permanent authorities which traditionally have been considered on an annual basis. It also included some new provisions.

The request for this approach stemmed from serious concern on the part of the administration that authorizing legislation for the Department has not been enacted since fiscal year 1980, except on a continuing basis. There was even a lapse in that continuing authorization during 1982, with considerable confusion and disruption.

Since we share great concern and frustration about the authorization situation, Senator Biden and I carefully examined the proposals relating to permanent authority. Our goal was to minimize the disruptive effects of the annual authorization process on the Department, while preserving the important oversight responsibilities of this committee.

When the fiscal year 1984 and 1985 authorization bills were reported, the committee adopted amendments which I offered, along with Senator Biden. Those amendments provided appropriations ceilings for the fiscal year, created permanent authority for routine, noncontroversial activities of the Department, and retained annual authority for sensitive Department activities and any new requested functions.

The bills, as amended, passed the Senate without objection. Unfortunately, the House acted on neither of those measures.

Enactment of authorization legislation must be a high priority. The authorities involved, while generally noncontroversial, are vital to the effective operation of our chief Federal law enforcement agency.

Under the situation which has existed for the last 6 fiscal years, important determinations respecting Department operations have either been left to the appropriations process or have been enacted on an ad hoc basis. This simply must stop.

I want to thank Senator Biden and other committee members for their past assistance in processing authorization bill. With the responsible cooperation of all of our colleagues here, and in the House, and with the strong support of the administration, I hope that we will be able to enact an authorization bill this year for the first time in 6 fiscal years.

Our witness today is the distinguished new Attorney General of the United States, Edwin Meese III. On behalf of the committee, I am pleased to welcome him to present the fiscal year 1986 request of the administration.

We are glad to have you with us, Mr. Attorney General.

STATEMENT OF HON. EDWIN MEESE III, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Attorney General MEESE. Thank you, Mr. Chairman.

The CHAIRMAN. You may proceed.

Attorney General MEESE. Mr. Chairman, I have an opening statement which has been distributed to you and to the committee. I will read from it.

The CHAIRMAN. If you would like to put your entire statement in the record and give the thrust of it, you can do that if you prefer.

Attorney General MEESE. I will do that, if I may, Mr. Chairman.

[The prepared statement follows:]

Department of Justice

STATEMENT

OF

EDWIN MEESE III
ATTORNEY GENERAL

Mr. Chairman and Members of the Committee:

I am pleased to be with you today to discuss the 1986 budget request for the Department of Justice. As you know, this is my first opportunity to testify before this Committee as Attorney General and I am looking forward to working with you, Mr. Chairman, and the other members of the Committee in the years ahead.

Though I was not at the Department of Justice during the time in which this budget was formulated, I have followed the programs and activities of the Department closely for the past four years and I fully support the initiatives that the President has proposed for the Justice Department.

This budget maintains our commitment to strengthen important law enforcement functions including enforcement efforts directed against drug trafficking, illegal immigration and threats to our national security. A significant portion of the budget increase will provide full year funding for initiatives required to implement the Comprehensive Crime Control Act of 1984 such as the bail reform, drug diversion and Assets Forfeiture Fund provisions of the Act. The Department will continue to expand federal prison facilities and activate a new detention center for illegal aliens in 1986. The proposal before you also contains funds for a program to assist State and local criminal justice projects, some of which can be targeted toward juvenile justice initiatives. Many items in the 1986 request extend activities

which will begin in 1985 through proposed supplemental funding. As I discuss the 1986 request in greater detail, I will emphasize those items which we intend to implement during this year.

This request represents an increase of 62 percent or $1.46 billion, over the Justice Department's budget of 2.34 billion in 1981. The lion's share of this four year increase has been directed toward the criminal enforcement activities of the Department such as the President's fight against organized crime and drug trafficking which continues to gain momentum. We are encouraged by the recent indictments of five men in New York who were acting as part of a commission which controlled an organized criminal network. We look forward to many more indictments of this nature in the years ahead.

The Organized Crime Drug Enforcement Task Forces are indicative of the type of coordinated law enforcement activities that are contributing to this success in our constant struggle to secure our citizens from organized criminal elements, narcotics traffickers and the related violence they spawn.

The joint activities of the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) are another prime example of the efforts that this budget will support. The granting of concurrent jurisdiction for narcotics investigations to the FBI has resulted in approximately 800 joint DEA/FBI investigations with 400 Title III wire tap investigations since 1982. These programs have opened the door to the higher echelons of drug trafficking organizations. Our successes in these areas have so angered the leaders of these organizations that they have, in essence, declared war on the DEA and other agencies involved in these enforcement activities. It is at this level that federal enforcement efforts will have the most damaging effect on these criminal organizations. It is also at this level that pressure must continue to be applied against these organizations in order to dismantle the infrastructure upon which they are based.

These and other efforts have been successful in a significant part due to the support given by this Committee and Congress. We must continue to join forces in countering the threats to our domestic security mounted by these organized criminal elements. This budget will continue to support our efforts in these most important enforcement activities.

Mr. Chairman, I am requesting today a budget of $3.8 billion and 62,281 positions. This is a net increase of 455 positions and $34 million over the resource level anticipated for 1985.

Officials from the Department will be available to answer specific questions you may have concerning programs under their direction during other hearings. However, I would like to outline some of the most significant initiatives of this request.

The President's budget requests $70 million in 1986 to implement various provisions of the Comprehensive Crime Control Act of 1984. This will provide full year funding for 837 new positions for which recruiting and placement will begin in 1985. Nine appropriations of the Department of Justice will share in the requested funding: U.S. Attorneys and Marshals, Federal Bureau of Investigation, Drug Enforcement Administration, Federal Prison System, Office of Justice Programs, Criminal Division, Fees and Expenses of Witnesses (for Protected Witnesses), Assets Forfeiture Fund, and General Administration. Many of the enhancements I will be addressing are based on implementating the various aspects of this significant piece of legislation.

In response to this legislation, the Department recently established the Crime Victims Fund which will be managed by the Office of Justice Programs. As receipts materialize, the Department is authorized to grant up to $100 million in 1985 and 1986 for State, local, and federal victims programs. The Fund's primary source of receipts is criminal fines collected from persons convicted of offenses against the United States. Federal victims programs may be allocated up to five percent of the Fund's receipts.

In order to implement the provisions of the Comprehensive Crime Control Act of 1984 which established the Department of Justice Assets Forfeiture Fund, the Department is requesting authority to use up to $5 million of these proceeds in 1985 to begin a more aggressive forfeiture campaign. For 1986, we are requesting authority to utilize up to $20 million of proceeds for these activities.

This is an important continuation of the Department's efforts to combat two of the most serious crime problems facing the country: racketeering and drug trafficking. By attacking the economic power that sustains criminal enterprises and, in turn, using the very same resources against these criminals, the Department will strengthen its ability to dismantle major criminal organizations without diverting enforcement resources to bear the expenses of storage, care, and sale of forfeited assets. State and local law enforcement agencies, which assist in drug asset forfeiture activities, will also benefit from the seizures as a result of the law.

The 1986 request for U.S. Attorneys and Marshals includes $22.5 million in support of the Bankruptcy Amendments and Federal Judgeship Act of 1984 which authorized the creation of 85 new Federal Judgeships. These funds will provide full year funding for the 457 positions we expect to fill this year. This will allow us to present cases before the new judges, to provide security within the courtrooms and to handle federal prisoners. For the U.S. Attorneys, $20.1 million will provide full year funding for 199 Assistant U.S. Attorneys and 199 support personnel. The remaining $2.4 million will provide funding for 59 additional Deputy U.S. Marshals.

For the third consecutive year, the Administration is requesting resources to continue its planned strengthening of the FBI's Foreign Counterintelligence program.

The FBI is also planning to reallocate permanently $1.7 million to continue operation of the National Center for the Analysis of Violent Crime. The Center was established in 1984 with resources provided by various components of the

Department of Justice. It is anticipated that the Center's research will continue to focus on unusual crimes such as serial murder, with findings to be disseminated to the national law enforcement community through training and direct operational support. The 1985 appropriation includes funding for site preparation for a dormitory and classroom facility at the FBI Academy in Quantico, Virginia. An uncontrollable increase of $10.3 million is requested to permit construction of this 250 bed facility in 1986. Finally, the requested increase of 371 positions and $34,535,000 will be directed toward the FBI's highest priority field investigative programs.

For 1986 we are seeking a total of $67 million for State and local assistance as authorized in the Comprehensive Crime Control Act of 1984. This will permit the new Office of Justice Programs to provide about the same level of funding as is available in 1985. Eighty percent, which equates to $53.6 million, will be available for formula grants and twenty percent, or $13.4 million, will be available for discretionary grants. The State and local assistance program is principally targeted at specific programs which offer a high probability of improving the functioning of the criminal justice system, with special emphasis on violent crime and serious offenders.

Program increases totaling $35,665,000 are requested in the 1986 budget for federal prison expansion and modernization. A year ago, the federal prison population was 31,172 and the federal prison system was experiencing a 24.4 percent rate of overcrowding. The federal prison population, as of March 3, 1985, was 33,427, which represents a 7.2 percent increase over last year, and the federal prison system is currently experiencing a 34.1 percent rate of overcrowding. For 1986, the average daily population of the federal prison system is expected to reach 33,790.

This continuing growth in the federal prisoner population results from the vigorous investigation and prosecution of serious federal offenders under the Reagan Administration.

The 1986 request includes: (1) $16.5 million to construct 286 new bedspaces at five existing federal prisons; (2) $5.3 million to improve inmate living conditions at existing institutions; (3) $3.8 million to expand core facilities, such as food and medical services facilities, to accommodate increasing population levels; (4) $4.4 million for major renovation projects and to initiate the first phase of a series of fire safety improvement projects at several institutions; and (5) $5.7 million to continue converting and renovating the Leavenworth, Kansas, and Atlanta, Georgia, penitentiaries to smaller, more modern institutions.

The Federal Prison System plans to activate the Oakdale, Louisiana, Alien Detention Center early in fiscal year 1986. The Center will add 1,000 bedspaces for the housing of longer-term illegal alien detainees under the custody of the Immigration and Naturalization Service. In addition, prior construction projects will result in the activation of 1,148 bedspaces at 10 existing federal prison system facilities.

We are also requesting $5 million for additional cooperative agreements with State and/or local correction facilities. Since the program's inception in 1982 and including the proposed 1986 funding, about $55 million will have been provided to State and/or local governments for rehabilitation, modernization and construction of prisoner bedspace. With these cooperative agreements, the U.S. Marshals Service estimates that through fiscal year 1986 nearly 3,400 guaranteed bedspaces, primarily in local jails, will have been secured for the housing of federal prisoners.

Though the increases proposed in 1986 generally focus on the criminal enforcement activities of the Department, this request also supports the continuation of efforts in many other critical programs. We are continuing our efforts to protect the public treasury from fraud and abuse and are proud of our past and present debt collection program. Our antitrust activities support the Administration's efforts at deregulation and we must view future decisions with respect to the promotion of effective

competition in the world market. As I have recently stated, the Department will continue the energetic and vigilant defense of the civil rights of all Americans. We will also continue our expanded enforcement of laws designed to protect our environment. These are just a few of the examples of the significant civil litigation issues that the Department is routinely involved in and upon which we will continue to place emphasis in the future.

Congress has provided the Department with resources to address issues such as these over the past three years and I believe this investment of personnel and improved technology will be sufficient to allow us to address these important activities during 1986.

The Department's 1986 budget reflects management savings in a number of areas. There is a reduction of about $69 million related to the Administration's proposal to reduce federal employees salary by five percent beginning in January 1986.

The 1986 budget also reflects savings of 50 positions and $1.6 million in the Immigration and Naturalization Service (INS) related to the Grace Commission's recommendation that INS' Central and Regional Office administrative staffing be reduced. The Administration, in consultation with the Attorney General and the Commissioner of INS, agreed to a two-year phased reduction plan totaling 200 positions and $6.4 million. Congress affirmed the first phase of the reduction (150 positions and $4.8 million) which was proposed in the President's 1985 budget.

The 1986 budget reflects an additional $17.4 million in management and administration reductions. These overhead cost reductions are based on Government-wide analyses that show significant opportunities for cost-cutting in overhead program areas.

Funding for juvenile justice projects is available in our Office of Justice Programs appropriation. Accordingly, we propose to eliminate the separate line item funding in 1986 (67.6 million). We continue to propose that the Regional

Information Sharing Systems be funded by organizations benefitting from their activities rather than from Department resources. Funding has not been requested for the U.S. Trustee program ($9.4 million).

Based on recommendations contained in a General Accounting Office report issued in 1984, we are proposing a reduction of $5 million in directly appropriated funds for INS inspectional overtime at airports. This funding will be supplanted by $5 million in reimbursements from the air carriers for INS inspectional overtime and this reduction will not have a detrimental effect on the Inspection program.

Executive Order 12435 specifies that, unless otherwise extended, the President's Commission on Organized Crime will expire on July 28, 1985. There is an extension of this Executive Order currently with the President and we fully expect that the President will sign the extension. A supplemental appropriation request of $635,000 now pending should enable the Commission to sustain its ongoing work.

Mr. Chairman, I believe this budget request will enable the Department of Justice to continue aggressive programs directed at combatting all forms of crime. This request represents a modest increase over the 1985 budget but this increase is necessary to meet our law enforcement needs. I am looking forward to working with this Congress toward achieving the goal of ensuring the safety of the American people.

Attorney General MEESE. I am pleased to be with you today to discuss the 1986 budget request for the Department of Justice. As you know, this is my first opportunity to testify before this committee as Attorney General, and I am looking forward to working with you, Mr. Chairman, and with the members of the committee in the years ahead.

Though I was not at the Department of Justice during the time in which this budget was formulated, I have followed the programs and activities of the Department closely over the past 4 years and I fully support the initiatives that the President has proposed for the Justice Department.

This budget maintains our commitment to strengthen important law enforcement functions, including the efforts directed against drug trafficking, illegal immigration, and threats to our national security.

A significant portion of the budget will provide full-year funding for the initiatives that are required to implement the Comprehensive Crime Control Act of 1984, one of the most far-reaching pieces of legislation in the criminal field that the Congress has adopted in many, many years.

This includes such items as bail reform, drug diversion, and the Assets Forfeiture Fund, which were a part of the provisions of the act.

We will continue to expand Federal prison facilities and we will be activating a new detention center for illegal aliens during 1986. The proposal which is being presented before this committee contains funds for a program to assist State and local criminal justice projects, some of which can be targeted specifically toward juvenile justice initiatives.

Many items in the 1986 request extend activities which will begin in 1985 through proposed supplemental funding. As I discuss the 1986 request in greater detail, I will emphasize those items which we intend to implement during this year.

It should be noted, Mr. Chairman, that the budget request that is being proposed for fiscal year 1986 represents an increase of 62 percent, or $1.46 billion, over the actual Department budget of $2.34 billion which was in effect in 1981.

Most of this increase has been directed toward the criminal enforcement activities of the Department, with particular emphasis on the fight against organized crime and drug trafficking which continues to gain momentum.

We are encouraged, for example, by the recent indictments of those in New York who were acting as part of a commission which controlled one of the major organized crime networks in the country. We look forward to many more indictments of this nature in the years ahead.

The Organized Crime and Drug Enforcement Task Forces are indicative of the type of coordinated law enforcement activities which are contributing to this success in our constant struggle to secure our citizens from organized criminal elements, as well as to continue our fight against narcotic traffickers and the related violence which they spawn.

We are particularly proud of the joint activities of the FBI and the Drug Enforcement Administration which, together, are work-

ing very diligently in this field. The granting of concurrent jurisdiction for narcotics investigations to the FBI has resulted in approximately 800 joint DEA and FBI investigations, with about 400 title III electronic surveillance investigations since 1982.

As a result of these programs, we have been able to work on the higher echelons of drug trafficking organizations and the truly organized crime rings operating in this country. As a matter of fact, our successes in these areas have so angered some of the major leaders of these crime rings that they have, in essence, declared war on the DEA and other agencies involved in these enforcement activities because it is at this upper level that our Federal efforts in dealing with these major wholesale dealers are having the most damaging effect on the criminal organizations. It is also at this level that continuing pressure must be applied both within this country and overseas to dismantle the infrastructure upon which these organizations are based.

These and other efforts have been successful largely as a result of activities of the Department which have been supported very generously by this committee and by the Congress. We must continue to work together in countering the threats to our domestic security mounted by organized criminal elements.

We feel that the budget we are presenting to you today, Mr. Chairman and members of the committee, will support our efforts in these important enforcement activities.

Mr. Chairman, I am requesting today a budget of $3.8 billion and 62,281 positions in the Department of Justice. This is a net increase of 455 positions and $34 million over the resource level which we anticipate for 1985.

In the course of future hearings, officials from the Department will be available to answer the specific questions you may have concerning the programs under their particular direction. Today, I would like to outline some of the major initiatives that are contained in our request.

We have proposed $70 million for fiscal year 1986 to implement various provisions of the Comprehensive Crime Control Act of 1984. This will provide full-year funding for 837 new positions, for which recruiting and placement actually is beginning this year. Nine appropriations of the Department will share in the requested funding, including U.S. attorneys and marshals, the FBI, the DEA, the Federal prison system, the Office of Justice Programs, the Criminal Division, as well as the fees and expenses of witnesses fund for protected witnesses, the assets forfeiture fund, and general administration.

We have established, in response to legislation, the crime victims fund, which will be managed by the Office of Justice Programs. As you know, as the receipts materialize from fines and forfeitures, we are authorized to grant up to $100 million in 1985 and 1986 for State, local and Federal victims programs.

The fund's primary source of receipts is the criminal fines collected from persons convicted of Federal offenses. The Federal victims portion of this may be allocated up to 5 percent of the fund's receipts.

We have also established the assets forfeiture fund as a follow-up to the Comprehensive Crime Control Act. We are requesting au-

thority to use $5 million of that fund in 1985, and in 1986 we believe that authority to use up to $20 million will give us adequate funding to handle the forfeiture of assets activities.

These forfeitures are, of course, an important part of our activities in combatting racketeering and drug trafficking, so that the assets of those organized criminal rings that deal in these types of activities can be forfeited and the proceeds used, with annual balances in excess of $5 million will then revert to the general Treasury.

We are also able in this same way to provide some funding from the forfeitures to State and local agencies which assist in the drug asset forfeiture activities.

Our 1986 request for U.S. attorneys and marshals includes $22.5 million in support of the Bankruptcy Act amendments, as well as the Federal Judgeship Act of 1984, which created 85 new Federal judgeships. This will provide the necessary people in the Department of Justice to support the new judgeships which have been created.

For the third consecutive year, the administration is requesting resources to continue its planned strengthening of the FBI's Foreign Counterintelligence Program. We are also planning to allocate permanently $1.7 million to the operation of the National Center for the Analysis of Violent Crime, one of the major efforts that we have developed within the Department to work with local governments and local law enforcement agencies, in the handling of serial murders and other types of violent crime that need to be dealt with on a national basis.

We also have funding for additional training facilities at the FBI Academy at Quantico, which we feel will assist in maintaining the very high reputation of this particular facility and will make it available for additional training programs.

We are seeking $67 million for State and local assistance, as authorized in the Comprehensive Crime Control Act of 1984, which will permit the Office of Justice Programs to provide the same level of funding, approximately, as is available in 1985. About 80 percent of that will be available for formula grants, and about 20 percent for discretionary grants.

We are requesting in excess of $35 million for Federal prison expansion and modernization to continue our program to alleviate the overcrowding in the Federal prisons. The continued growth in the Federal prisoner population results from the vigorous investigation and prosecution of serious Federal offenders, and we feel that the amount requested this year and which will continue to be requested in future years will ultimately provide adequate prison facilities.

The prepared statement gives a more detailed breakdown as to how these funds will be used. We do plan to activate the Oakdale, LA, Alien Detention Center early in fiscal year 1986, which will provide additional facilities for handling illegal alien detainees who are under the jurisdiction of the Immigration and Naturalization Service.

We are also requesting funds for additional cooperative agreements with State and local correctional facilities so that we can make arrangements with these facilities for housing prisoners who

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are in the custody of the U.S. Marshal Service in local jails, when this makes them more readily available to the Federal courts or for other reasons.

We have also made requests for continuation of priority programs in other aspects of departmental activity. We are continuing our efforts to protect the public Treasury from fraud and abuse, and we are particularly proud of our past and present efforts at debt collection.

Our antitrust activities support the administration's efforts at deregulation, and we will be viewing future decisions with respect to the promotion of effective competition in the world market.

As I have recently stated both before this committee and elsewhere, the Department will continue the energetic and vigilant defense of the civil rights of all Americans. We will continue our expanded enforcement of laws designed to protect the environment, and we will continue with these and other examples of the significant civil litigation program in which we are regularly involved.

Congress has provided the Department with resources to address issues such as these over the past 3 years, and I believe that the investment of personnel and technology, particularly the improved technological facilities which the Department has received, will be sufficient to allow us to continue these important activities during 1986. Indeed, the improved technology has made it possible for us to reduce some of our administrative expense, in line with the overall budget strategy of the administration.

The 1986 budget does reflect management savings in a number of areas, particularly related to the administration's proposal to reduce Federal employees' salaries by 5 percent beginning in 1986. This matter is reflected in our budget, as it is in the budgets of other departments.

It also reflects savings of positions, 50 positions in INS, relating to the Grace Commission recommendations concerning central and regional office administrative staffing reductions. The administration, in consultation with the Attorney General and the Commissioner of INS, has agreed to a 2-year phased reduction which ultimately will total some 200 positions and save over $6 million.

The first phase of this reduction was affirmed by the Congress when it was presented in the proposed budget by the President for 1985.

We also have an additional $17 million reduction due to other management and administrative savings resulting from Government-wide analyses that show significant opportunities for cost-cutting in overhead program areas.

The funding for juvenile justice projects is being combined in the Office of Justice Programs appropriation, and this will no longer exist as a separate line item. We continue to propose that the regional information sharing systems be funded by organizations that are actually benefitting from their activities rather than from the Federal Government and Justice Department resources.

Funding has not been requested by the Department for the U.S. Trustees Program. We feel this is a policy issue that the Congress should determine, and if it is determined to continue this program, then funding should be made available.

Based on recommendations contained in the GAO report issued in 1984, we are proposing a reduction of $5 million in directly appropriated funds for INS inspection activities at airports. These funds are being supplemented by reimbursements from the air carriers for inspectional overtime. This is a matter of reducing the Federal appropriation without reducing the level of service.

We also are planning, and have received from the President since the time that this testimony was prepared, the signing of an executive order continuing the President's Commission on Organized Crime, and therefore are requesting a supplemental appropriation of $635,000 for 1985 so that this Commission can continue its work and render its report by April 1986.

Mr. Chairman and members of the committee, this has been a very quick summary of some of the features of our budget. The entire request is before you. I believe that this budget request will enable the Department of Justice to continue aggressive programs directed at combatting all forms of crime for which the Federal Government is responsible.

It represents a modest increase over the 1985 budget, but this increase is necessary to meet our law enforcement needs; this is an increase which has been approved by the President as part of his emphasis on the effort that the administration is making against crime.

I look forward to working with this Congress toward achieving the goal of ensuring greater safety for the American people and carrying out the very important responsibilities of the Department of Justice.

Thank you, Mr. Chairman and members of the committee.

The CHAIRMAN. The distinguished ranking member, Senator Biden, do you have an opening statement?

Senator BIDEN. Yes, I do. I will be brief.

Welcome, General. I apologize for not being here when you arrived. Mr. Chairman, I look forward to working with you again on the Department's authorization, as we have done in previous years, and anticipate a productive Congress, as we had last time, on matters that are of great concern to the Attorney General, as well as to this body.

General, the question I have been asked more often than any other over the last month-and-a-half was do you think the confirmation hearing will have any effect on the relationship between the committee and the Attorney General's office, and specifically between you and the Attorney General.

I said I can only speak for myself; I could not speak for the Attorney General. I said I did not think it would. One reporter suggested he had heard me make a speech where I told a joke about Winston Churchill. He said, are you sure you are not going to be like Churchill and Lady Astor, and I said, no, I do not think so.

To remind you of that joke, it was that Lady Astor and Winston Churchill allegedly did not get on very well, and they were having tea one day and, in a fit of anger, she said, Winston, if I were your wife, I would put poison in your coffee. And he looked back at her and he said, if I were your husband, I would drink it. [Laughter.]

I assured him we did not have that kind of feeling, I hope. It is safe to drink tea in my office and in yours.

All kidding aside, general, I hope everything is put aside, and we can move on from here. I think you have an opportunity to make historic strides in the office, and particularly in the criminal justice area where you have the greatest background, expertise, knowledge and interest. I also believe the new powers you will have in the drug coordination area, which we will discuss during the question-and-answer period, is an opportunity no other Attorney General has had previously.

I think it can mark the beginning of a new attack on drugs and organized crime in this country, not to suggest that General Smith has not done an admirable job; he has, and the administration has for 4 years made this a priority.

But the combination of your background, interest and expertise in the area, coupled with the changes in the law and the changes that came with the comprehensive crime package, I think, affords the Congress, this committee, and the Attorney General's office a great opportunity to do a great service to the American people.

I sincerely look forward to working with you in that effort, and publicly do now what I privately did earlier by letter, congratulate you, and I look forward to working with you.

Attorney General MEESE. Thank you, Senator. I look forward to working with you and the rest of the committee.

The CHAIRMAN. The distinguished Senator from Iowa.

Senator GRASSLEY. Mr. Chairman, I do not have an opening statement. I do have some questions later on on the Defense Procurement Fraud Unit that I want to ask about.

The CHAIRMAN. The distinguished Senator from Ohio.

Senator METZENBAUM. No opening statement.

The CHAIRMAN. The distinguished Senator from Kentucky.

Senator MCCONNELL. Mr. Chairman, I just want to congratulate the Attorney General on his confirmation. I was glad to be able to support it, and I certainly welcome you here today and was very interested in your remarks.

Attorney General MEESE. Thank you, Senator.

Senator MCCONNELL. No questions at this time, Mr. Chairman.

The CHAIRMAN. Mr. Attorney General, I have some questions here I will propound to you.

In past fiscal years, I have introduced the authorization bill presented by the administration, with Senator Biden as a cosponsor. As you are no doubt aware, the committee is required to report such legislation by May 15.

Can you tell us when the fiscal year 1986 bill will be sent to Congress?

Attorney General MEESE. Senator, the proposed legislation is presently being reviewed by the Office of Management and Budget. It has been completed by our Department. It is our hope to get it to you just as quickly as possible, hopefully by the time you return from the Easter recess.

The CHAIRMAN. In recent fiscal years, the Department has requested and has received major increases in funding for law enforcement and immigration personnel. The fiscal year 1986 request includes a 5 percent across-the-board pay cut for Federal employees.

I was just wondering what effect will such a cut have on the morale of FBI, DEA and Border Patrol agents.

Attorney General MEESE. Well, Mr. Chairman, I do not think anyone enjoys taking a pay cut, but I think that the members of the Department of Justice, including the law enforcement agencies that you mentioned, feel that if this is necessary for the administration's efforts and the Congress' efforts to cut the deficit, and if it is being applied equally among all Government employees, they will take care of their responsibility like everyone else.

The CHAIRMAN. The fiscal year 1986 request for the U.S. attorneys and marshals included a $9.4 million program decrease, which would determine the U.S. Bankruptcy Trustees Pilot Program. Materials submitted to the committee by the Department indicate that the administration proposes to discontinue the program at the end of fiscal year 1985 unless specific action is taken by Congress to continue it.

In the Bankruptcy Amendments and Federal Judgeships Act of 1984, the Congress took specific action to reauthorize the Pilot Program through fiscal year 1986. I was wondering why, then, does the administration propose to terminate the program prematurely.

Attorney General MEESE. Mr. Chairman, this program, the Trustees Program, has in the past competed with other purposes for which departmental funds were utilized. It is our feeling that if the Congress wishes to continue this program, and we certainly have no objection to continuing it, it should be separately funded.

The CHAIRMAN. Regrettably, when we processed crime legislation in the 98th Congress, we were unable to attain four measures in the so-called core package which was eventually enacted into law, or at least passed through the Senate.

Those four bills pertained to the death penalty, habeas corpus reform, exclusionary rule reform, and the Federal Tort Claims Act. I have reintroduced the first three of these, as they passed the Senate last year by overwhelming margins. The fourth will be reintroduced in the very near future by Senator Grassley and myself.

What is your view of the need for legislation in these four areas, and are there any other needed changes in Federal criminal law, including technical corrections for the Comprehensive Crime Control Act?

Attorney General MEESE. Mr. Chairman, I believe that the need for the four bills that you talked about is as great, if not greater today than it was last year when these four legislative measures were passed by the Senate.

We will be working very closely with this committee and with the Congress to try to gain passage of all four of these bills.

As far as the technical corrections to the Comprehensive Crime Control Act, that is in the process now of being prepared and will be submitted shortly. These so-called technical corrections should be noncontroversial and we would hope that they would go through very quickly.

The CHAIRMAN. Last week, along with eight distinguished members of this committee, the majority leader, and the chairman of the Appropriations Committee, I introduced S. 704, the Intercircuit Panel of the United States Act.

This legislation has a high priority from the Supreme Court, especially Chief Justice Burger. What are your thoughts on this measure and other proposals aimed at reducing Federal court caseloads, such as a repeal of diversity jurisdiction?

Attorney General MEESE. Senator, I feel that the intercircuit panel, as developed by the Chief Justice and as included in your legislation, does have some merit, provided that it is coupled with other measures to solve some of the problems of the total Federal judiciary.

To this end, the Department would support the Federal Judicial Study Act, which would create a facility for long-range planning for the Federal court system. We agree that diversity jurisdiction should be looked at, with the possibility of legislation to curtail or perhaps end diversity jurisdiction in the Federal courts.

We think that the mandatory jurisdiction requirements of the Supreme Court should be modified. We also feel that the flood of suits by State prisoners into the Federal courts should be curtailed through the bill that you talked about previously, the legislation relating to Federal intervention in State criminal proceedings.

So we feel that these other measures should accompany the experiment with an intercircuit panel.

The CHAIRMAN. You have recently announced the nominations of D. Lowell Jensen to be Deputy Attorney General, and William Bradford Reynolds to be Associate Attorney General, I believe. Mr. Jensen's accomplishments in the area of criminal law are well known.

Are there any plans for reorganizing the Department to reflect that expertise?

Attorney General MEESE. It would be a good idea, in my opinion, to realign some of the functions of the Department in accordance with the expertise of these two gentlemen when they are confirmed by the Senate.

When such plans are developed, as they will be in the next few weeks, we would propose sending this realignment for examination and comment by the committee.

The CHAIRMAN. Last October, I announced that the committee would hold hearings on civil suits brought under the Racketeering Influenced and Corrupt Organizations Act, better known as RICO. The first hearing is scheduled for April 30 before the full committee.

Because of the treble damages available under the act, RICO counts are commonly being included in lawsuits which may not involve the kind of organized crime that was the concern of Congress when the act passed in 1970.

Has the Department been looking into this issue, and do you have any preliminary thoughts on it?

Attorney General MEESE. Mr. Chairman, we believe that the RICO statute should be used for the purpose against which it was originally intended; that is the combating of organized crime.

We are presently looking into and analyzing the situation as to how the statutes have been used by private parties, and we may be coming before the Congress with some legislation to modify this statute.

We think the RICO statute itself is very important, both the civil and the criminal aspects, but we feel that it should be directed against organized crime and not used in nonorganized crime types of litigation by private parties.

The CHAIRMAN. I have one other question I will ask; then we will turn to the other members.

Mr. Meese, the Department of Justice has moved to delete all funding for the regional information sharing systems. I know that you have not had time to familiarize yourself with this important law enforcement function.

I wonder, however, if you would be willing to meet with the regional project directors in order to learn first hand the vital role they play in local and State law enforcement efforts. I thought this might be beneficial to both of you in learning the views of each other.

Attorney General MEESE. I would be very happy to meet with the directors of these programs, Mr. Chairman. We have no quarrel whatsoever with the programs themselves. We do feel that since the Department has funded these programs now for many years in the amount of approximately $40 million and has provided extensive equipment, this may be the time, and we feel it is the time, for the support of these programs to be undertaken by the entities, the organizations and the levels of Government that actually benefit from the information.

But I would be happy to meet with these directors and talk over the situation with them.

The CHAIRMAN. The distinguished Senator from Ohio.

Senator METZEMBAUM. Mr. Meese, I am pleased to welcome you here this morning and I must confess to just a little smile on my face——

The CHAIRMAN. Senator Biden has just come in. Do you want to——

Senator BIDEN. No; go ahead.

The CHAIRMAN. Senator Biden says go ahead.

Senator METZENBAUM. A smile on my face that in your first appearance before this committee, having left a leadership role in the administration, you come before us and ask for an increase of 62 percent in the budget over that of 1981. I am not saying you are wrong about that and I am not saying I am opposed to it, but it is an indication that there are extenuating circumstances for every one of the departments of Government and you can make a persuasive case why you cannot cut the budget in some areas.

I might ask you that in your statement where you point out you are asking for a $1.46 billion increase over the budget of 1981, how much of an increase is that over 1985?

Attorney General MEESE. The increase over 1985 is very small; it is a very small percentage. It is $34 million, approximately, and I believe it is a net of 455 positions.

Senator METZENBAUM. Is that 34 million over inflation, or is that including inflation?

Attorney General MEESE. I believe that is including inflation; that is the total amount of the budget.

Senator METZENBAUM. All right. I certainly will look at it and was only making that comment rather parenthetically.

Let me ask you whether you have any particular views on a subject that has been of great concern to me, and that has to do with what I consider to be a failure to have a rehabilitation program for our incarcerated prisoners. Our prisoners very seldom come out better than when they went in, but rather come out worse.

I have had some thoughts on this for some time. I have talked with the head of the Bureau of Prisons, but I have not been very successful in making any headway. I am wondering whether or not I might look to you for some leadership in this area and working together in the whole area of rehabilitating prisoners so that they just do not go back on the streets to commit again the same crimes that they have committed in the past.

Attorney General MEESE. Senator, there are a number of differing views within the correctional community as to the value of rehabilitation. There are some eminent correctional administrators who feel there is no such thing as rehabilitation on the one hand. There are others who feel that some prisoners can be rehabilitated.

I personally believe that wherever there is a possibility of rehabilitation, it should be pursued. Whether this is 10 percent of the prisoners or 90 percent of the prisoners or somewhere in between, I do not think anyone knows for sure.

The Director of the Bureau of Prisons has been very supportive of the industrial programs and the prison industry's programs in the Federal Government. As a matter of fact, in the Comprehensive Crime Control Act, the number of projects is being expanded from 7 to 22 industrial training projects in the Bureau of Prisons.

We have probably made as much progress within the Federal system as in any other prison system in the country. We are looking toward, and I personally am committed, to improving that record, to utilizing all of these projects, to seeing if we cannot set an example in the Federal system for the States to follow, and also to working with the correctional executives in the various States to see if nationwide we cannot have better industrial training programs as a part of prison activities.

I think there is a value not only in terms of rehabilitation; I think there is a value in terms of operating the prisons because if prisoners are working during the day rather than sitting around in a yard thinking of mischief, they pose less of a security risk to the prison officials themselves.

Senator METZENBAUM. Well, I would be very happy to try to work with you in rehabilitation programs. I think it is a wanting need in this country. Some other nations have done perhaps far better than we have and we might look to them for some guidance.

I would like now to go to the whole question of not only expenditures, but of policies. Sunday, reporter Fred Graham pointed out to you that the Supreme Court had not ruled on cases involving quotas in promotions or hirings, but it only ruled in connection with cases having to do with layoffs.

He discussed the fact that you intend to go into about 45 cases where there have been consent decrees and ask the courts to overturn them. Leslie Stahl asked you, are you not concerned that you are going to be disrupting in some cases affirmative action rules and laws that have been working. These are agreements that are in place that nobody is upset about at the moment, and now the

Federal Government does not have enough to do, so it sticks its nose in and comes back in the case, although it is a fact that the Government was a party in the first instance.

She then went on to say to you, if you do that and you overturn that which has already been agreed upon and is working and there is no problem in the community, then perhaps you leave the community with some problems. And she asked, how do you make up for past discrimination? I also think this is what civil rights people want to know from the administration.

She asked what about past discrimination? How do you make up for it if you do not have some plan like this? And your answer to that was, we are very much in favor of real affirmative action; not discrimination, but affirmative action, and you do it by your hiring practices, by your recruiting practices. You go out and find the people, you go out and have training programs; you have an outreach program.

But let us be realistic; the reason these cases first came to court, the reason that there were consent decrees, the reason that the matter was resolved is by eliminating the very problem that you indicate is going to be the solution. You say you do it by your hiring practices and by your recruiting practices.

In those 45 communities, and I do not know the specifics of these cases, there was a problem. A court case developed. Now, you are saying we are going to take these extra dollars you have given us, or we are asking you give us; we are going to go in. We are going to open up court cases. There is no question that there is going to be protracted litigation as a consequence; it is not going to be easy. And you are going to create problems that do not exist at the moment.

I have to ask you, how can you justify doing that? Why do you not let it alone if it is not bothering anybody?

Attorney General MEESE. Well, Senator, first of all, your characterization gives a very false picture of what the Department is actually doing. The Civil Rights Division, acting under the requirements of a recent Supreme Court decision, is sending letters to 45 jurisdictions which have consent decrees, to which the Department of Justice is a party, asking them to review those decrees in the light of the *Stotts* decision.

We have made no decision as to going into all 45 to see that the consent decrees be overturned. We will handle each of those on a case-by-case basis. The important thing is that the law of the land, as defined by the Supreme Court, is that we cannot have courts discriminating against people, and that is the whole purpose of our efforts.

This Department is against discrimination in any form, and this includes consent decrees which may have an element of discrimination in them. We feel we are compelled by the court decision, then, to review those decrees to see whether they should be amended.

We are not talking about protracted litigation; we are not talking about disruption; we are not talking about overturning things. But it may well be that in some cases those decrees would have to be amended. In other cases it may be, as you suggest, that the problem has been solved. But we think that the United States,

through the Department of Justice, has a mandatory responsibility not to be a party to intentional discrimination.

Senator METZENBAUM. You said that the Supreme Court requires it. Did the Supreme Court say that you were obligated to do that? You said that Sunday and you have said it again now.

In what manner did the Supreme Court require you to do that? The Supreme Court ruled on a case having to do with layoffs. It did not have anything to do with hiring. Now, is there something that I do not know about where the Supreme Court said that the Justice Department is required to go in and explore all of the 45 presently agreed-to consent decrees?

Attorney General MEESE. Senator, the *Stotts* decision and the reasoning in that decision clearly indicated that quotas are impermissible. There is no difference between the layoff plan that was used in that case and quotas in hiring or quotas in promotions.

And we feel an obligation, as the Department of Justice, not to be a party to intentional discrimination.

Senator METZENBAUM. So that it is your feeling of an obligation, not anything you are ordered to do by the Supreme Court?

Attorney General MEESE. The Supreme Court did not specifically order it, as they do not normally, but they certainly made it very clear in their decision as to what the law is.

Senator METZENBAUM. Now, Mr. Meese, I am very concerned about the fact that 13 U.S. Senators, members of your party, recently wrote the President saying, "They would have no choice but to oppose the nomination" of a particular individual whom the President had nominated, and then went on to say in that letter that, "We are persuaded that Mr. Frey's own political and judicial philosophy is very much at odds with your own philosophy and the public positions you have taken."

The Republican platform, they said, "clearly expressed positions opposite to Mr. Frey's conduct on these issues. There could well be other points where he will be at significant cross-purposes to the philosophy that we mutually share."

Now, I do not know Mr. Frey; I do not know anything about him. I do not know whether he should be a judge or should not be a judge, but the question is, is this administration going to use ideological positions when you permit senatorial pressure to determine who should or should not be appointed or confirmed as a member of the judiciary?

I think it is broader than any one issue. What concerns me is that if we are going to open the door to saying that a judge will only be sent here by the administration and will only be confirmed if that nominee meets our criteria as to his or her political philosophy, then we have gone a long way down the road of changing what I consider to be the appropriate rules in judging an individual's qualifications.

When Justice O'Connor was up for confirmation, I made it very clear what my own views were because I certainly did not agree with her political philosophy. And I said to her, "If I happen to disagree with you on any specific issues, it will in no way affect my judgment of your abilities to serve on the Court. I have some very strong feelings about judicial appointments. Basically, I think the appointee must be a person of integrity, a person strong enough to

stand up for his or her point of view, a person who has been shown to be a highly qualified legal scholar, and a person who will have the kind of character that reflects well on the judiciary in general."

I am aware of the Republican platform phraseology on the subject of the sanctity of human life, and I am concerned that we have gone down a new road with the pressure of these 13 U.S. Senators on the President.

Were you a party to the withdrawal of that nomination by the President of the United States after the letter from the 13 Senators had been received?

Attorney General MEESE. No, I was not.

Senator METZENBAUM. Were you aware of it?

Attorney General MEESE. I was aware of it at some point, yes. I am not sure exactly when, but I was made aware of it.

Senator METZENBAUM. Do you think that the fact that an individual is or is not a member of a particular organization—I think this man was a member of Planned Parenthood and a gun control organization, or something or other—do you think that there ought to be any litmus test as to who can or cannot qualify as a judicial nominee?

Attorney General MEESE. I do not think there should be a litmus test, but I think that on occasion a person's memberships may be significant in evaluating his qualifications.

Senator METZENBAUM. Let me ask you——

The CHAIRMAN. Senator, if you are on this same subject, go ahead, but otherwise your time is up now.

Senator METZENBAUM. Let me finish.

The CHAIRMAN. All right, go ahead and finish.

Senator METZENBAUM. You made a statement Sunday when asked about this matter that—the question really is, are you going to use certain ideological tests in choosing the judges? For example, must they be opposed to abortion in order to be selected? Here is an excerpt of that exchange:

> Mr. MEESE: Well, I think they should have sanctity for humans, a feeling of sanctity for human life, but I don't think we use any litmus test that relates to abortion or anything like that.
>
> Ms. STAHL. The sanctity of human life is abortion and it is a litmus test.
>
> Mr. MEESE. Well, it is not a litmus test, it is a general concept and approach, but it is certainly not a narrow litmus test and we will have that.
>
> Ms. STAHL.

and very seldom do we get an editorial throw-away line like this, but she even said to you at that point—"How can you say that?" I will ask you, as to the reference to the sanctity of human life as used in the Republican Platform what does it mean if it does not mean the position of the individual with respect to the matter of abortion?

Attorney General MEESE. It means exactly what it says, Senator, a regard for the sanctity of human life, a concern about human life and all of its forms, and I do not think it relates specifically to abortion. I think it is a general concept.

Senator METZENBAUM. Do you think it is appropriate for the President to withdraw the nomination on the basis of 13 Senators

saying that that individual did not comport with the political philosophy of the President?

Attorney General MEESE. That was not the basis on which the President withdrew the nomination. It was on the clear showing that Mr. Frey would not be confirmed. Mr. Frey's nomination was sent up here. During the last session he was not confirmed and it appeared clear that he would not be confirmed during this session. That was the reason for the withdrawal.

Senator METZENBAUM. How was that made evident, that he would not be confirmed?

Attorney General MEESE. Our legislative liaison people came to that conclusion after conferring with the Senators concerned.

Senator METZENBAUM. Does that mean that if one or more of us should decide to oppose one or more judicial nominees and perhaps be able to keep that individual from being confirmed, that the administration would withdraw the support of that nominee?

Attorney General MEESE. Well, the administration would have to put up someone in that person's place if they were not going to be confirmed by the Senate. I think that stands to reason.

Senator METZENBAUM. My time has expired, but I want it understood that if the administration and if my colleagues in the Senate are going to use these philosophical or political points of view in order to decide who will or will not be sent to the U.S. Senate for confirmation, I think it is only fair to point out that two can play at that game. I do not believe that we should. I believe that the individual has a right to have an opinion and I expect every individual to have opinions. But if we are going to make that the determinant of whether or not that individual is going to become a judge, then I would say that those of us who do not believe that should be the basis of determining confirmation or nonconfirmation may see fit to use those procedures that are available to us to oppose 150 judges coming down the road. I think that would be inappropriate. But I think it was equally inappropropriate for 13 Senators to force you or urge you to withdraw the nominee on the basis that they did, and I think it was even more inappropriate for the President to do so. He normally stands behind his nominees, and no one knows that better than the man seated in the chair today.

Attorney General MEESE. Senator, the President did stand behind that nominee and had there been a possibility of that person being confirmed, I am sure that that name would still be here before the Senate, but——

Senator METZENBAUM. It was never turned down by the committee.

Attorney General MEESE [continuing]. When it was made clear from the inquiries made by the legislative section of the White House that confirmation was not possible, the nomination was withdrawn. I want you to know that we do not have narrow ideological tests for judges. Quite frankly, I think your statement that we are embarking on some new pattern is, of course, ridiculous. Every President from both parties has considered philosophy as one of the aspects of a person's qualifications for the bench, but the philosophy in this administration that is looked at is the person's approach to the judiciary, his or her sense of judicial activism, the

way in which judges should conduct themselves, their sense of constitutional law—those are the kinds of things that are properly considered by the President. At the same time, there is not a narrow ideological test such as you are suggesting.

Senator METZENBAUM. Was Mr. Frey turned down———

The CHAIRMAN. Senator, your time is up. I have indulged you as long as I can, but there are other people here and we will come back to you again.

Senator METZENBAUM. I appreciate that, Mr. Chairman.

The CHAIRMAN. I try to be considerate. The distinguished Senator from Iowa.

Senator GRASSLEY. Thank you, Mr. Chairman.

Mr. Attorney General, I want to commend you on the one sentence in your statement on page 9, "We are continuing our efforts to protect the public Treasury from fraud and abuse." I appreciate that direction that you are giving to the Department. However, as you know, I have been asking questions, will ask questions at this meeting, and I suppose I will be asking questions in the future about the past performance of the department's defense procurement fraud unit and, for the benefit of my colleagues, that is a unit that was set up nearly 3 years ago to prosecute fraud in the defense industry. It was a very specialized team approach.

I am inquiring about this special unit for several important reasons. The first is that it is clear that fraud by both the small and the large contractors continues to steal money out of the public purse and therefore away from the taxpayer.

For instance, just yesterday we had a congressional committee again unveil very serious and outrageous examples of fraud and mismanagement by one of our largest defense contractors. Second, I am quite familiar with the problems that plagued the Justice Department in its earlier investigations of 2.5 billion dollars' worth of alleged fraud in the shipbuilding industry. You and I visited about this many times, about DOJ's investigations of Litton, Lockheed, Newport News, and General Dynamics. I do not think any of us would say that these could be heralded as victories in any real sense.

It was the failure of those cases—and I do not think I have to remind you of this—it was the failure of those cases, the failure to prosecute those major defense contractors, which led to the creation of this fraud unit. The Department's own words in the creation of this unit were—and I would like to quote—"This unit was specifically designed to overcome numerous problems that had been encountered in the investigation of Litton and General Dynamics." Then the Department further stated, "The unit's goal is to deter future fraud by conducting nationally significant procurement fraud and corruption investigations and prosecution."

Now, with nearly 3 years under its belt, I think it is appropriate to examine the fraud unit's record. So I would ask, Mr. Attorney General, would you say that the record of the unit as you have had a chance to look at it now a month or so into your present position, shows that it is fulfilling its goal of deterring fraud by conducting complex and nationally significant prosecutions?

Attorney General MEESE. Yes, sir, I would. The unit just began operations fully during 1983. In the 2 years it has existed, I think it

has made progress. There is still a long way to go. It has some 30 investigations pending at the present time, I believe. It has completed some 19 investigations. It is going after the more complex, more difficult types of activities. It has conducted seminars and conferences for U.S. attorneys offices so they will be better able to handle these cases themselves, and I think it is doing exactly what the Attorney General and the Secretary of Defense had in mind.

Obviously, as the unit progresses and has more of these cases that do come to completion, I think we will see a better statisticals picture of the situation than we do at the present time.

Senator GRASSLEY. Well, I would like to keep to those 19 cases on the record you mentioned and not any pending matters. It is always interesting that not just you in this case, but a lot of people that I have questioned about defense problems talk about not what the record is, but what might be pending, what might be out there tomorrow. And I have always referred to that as manaña talk, the happy talk that we get that things are going to be better. For example, I have a press release from the DOD, dated October 12, 1983. It says, "221 possible cases of contractor fraud being pursued by the Defense Department," some of these supposedly involving major contractors. I think we were led to believe that we would see results soon.

Of course, now it is 1985 and I still do not know of any fraud cases involving major defense contractors prosecuted since then. I do not think we can talk about pending cases because, as you and I well know, I have had great difficulty getting information on those pending cases. So I would like to just stick to the fraud unit's record for now. With regard to that record, the unit has been involved in 17 convictions, but these stem from just 6 separate investigations, not 17—or 19 as you said. If you look at the record you will find 17 convictions were obtained, but from just 6 separate investigations.

Now, that is just about 2 or 3 a year. And so I guess I would like to ask do you think this record is evidence that the fraud unit is actively and aggressively—and those are not my words, those are the words of the department—actively and aggressively enforcing the laws against procurement fraud?

Atrorney General MEESE. Yes, I do, Senator. It often takes anywhere from 6 months to 2 years once a case has been developed to complete the investigation and the prosecution. I think the fact that we have this number of cases in this short period of time of 2 years is commendable. These are very complex cases. The unit was set up not to handle the ordinary contract fraud which is now being handled by U.S. attorneys, but was to handle the more complex and more difficult cases as well as to assist and to train assistant U.S. attorneys so they would be better able to handle these cases. I think the unit is operating effectively and I think that effectiveness will continue to be shown.

Senator GRASSLEY. Well, I think the point that I would like to make—and you expressed very accurately why the unit was set up, but I guess I would like to suggest that the record does not support the assertion that we are going after the big contractors and that we are going after those cases that would not otherwise be prosecuted. Just take a look at the fact that only one case that the unit

has done has been handled by a major contractor. That was the Sperry case.

Pentagon auditors claimed that Sperry Corp.—and that ranks about 20th among defense contractors—had mischarged the Government for $3.3 million, yet the Department of Justice challenged less than 10 percent of that amount and the result was negotiated. It was an out-of-court settlement which the judge termed—and these are his words—unconscionable, and in the judge's words the settlement the Department of Justice negotiated evidenced "one justice for the rich and another for the poor." In other words, in that Sperry is a big, well-heeled contractor, and was only challenged on 10 percent of what the Department of Defense said it should be. In that it was a negotiated settlement, I guess I can only ask you, could it be that this would translate that the unit as pursuing one form of justice for the big contractors and another one for the small contractor?

Attorney General MEESE. That was not an out-of-court settlement. It was a guilty plea. There was $847,000 in criminal fines and civil penalties.

Senator GRASSLEY. It was still only based on 10 percent, $325,000. Now, the penalties——

Attorney General MEESE. You are assuming that that is correct.

Senator GRASSLEY [continuing]. The penalties on the interest brought it up to the——

The CHAIRMAN. Senator, he has a right to answer further. Now, let him answer the question.

Senator GRASSLEY. Go ahead.

Attorney General MEESE. You are taking an estimate by some auditors. I can only tell you that the case as it was prosecuted resulted in this amount in terms of fines and penalties and civil damages. I think that the case did result in a guilty plea. I think this is the important aspect of it. I do not think the Department has been lenient or easy on the Sperry Corp., and I definitely do not think there are two standards of justice, one for large companies and one for small companies. As a matter of fact, I think on a regular basis you will see prosecutions commence against some of the largest contractors in the defense program.

Senator GRASSLEY. But of all the cases, this Sperry case is the only one that you can come close to calling a major defense contractor. You know, I am using the judge's own words, that the Department of Justice did not do its job. The total amount that Sperry had to pay in this case was one one-thousandth of what it takes in annually from the Pentagon, and you have to remember that this unit was set up, Mr. Attorney General, to go after these complex cases against the big contractors, not the little ones, and it was to set an example. Do you think that this really sets an example? It was set up to deter fraud among major contractors, and do you think that one example involving Sperry is going to do it? All I am trying to find out is whether the unit's performance is commensurate with its rhetoric.

Attorney General MEESE. Yes, Senator, I believe it is. I cannot tell you without knowing more about the facts of the individual case. I know the results of the case, but it seems to me that going

against the Sperry Corp., arriving at a guilty plea, having nearly $1 million in fines and civil damages is a considerable penalty.

I also think that the unit has only been in existence a little over 2 years, and it takes that long to develop the cases for prosecution. So it does not at all surprise me that, because these are complex cases, we do not have more that have already been prosecuted against major contractors. I suspect that there will be many more cases against some of the major contractors coming along within the very near future.

Senator GRASSLEY. I would like to follow up on one of the statements you made of the purpose of the unit, to handle cases that maybe the local prosecutors, U.S. prosecutors can handle, and then to also train so those prosecutors can better handle it.

Now, I said that the unit has only gone after one major contractor. I also suggest that there has not been much money recouped. Let me take the case involving the largest dollar amount obtained. They did recoup $3 million from the Davie Compressor Co. for an obvious case of altering invoices. This case was handled in conjunction with an Ohio U.S. attorney. Was there anything complex or nationally significant—and those are the words again in the charter of this fraud unit, to go after complex and nationally significant cases—was there anything complex or nationally significant about this case which called for the involvement of the special unit? Or was this case the type of a case that the Ohio U.S. attorney could have handled and would have handled without the fraud unit's aid or even assistance?

The CHAIRMAN. Mr. Attorney General, I believe you were not Attorney General then, but if you know the facts you could answer the question. If you do not, I think it would be well to look into it and supply the facts for the record.

Senator GRASSLEY. Can I tell the chairman, the distinguished chairman that I did submit in advance to the staff of the Attorney General that I would be asking these questions so that he could come prepared to answer them.

The CHARMAN. You may proceed.

Attorney General MEESE. Senator, this was a relatively complex case but, more than that, it was a case that was used to develop techniques in conjunction with the U.S. attorney. It was a major case, involving ultimately penalties that ranged as high as $3 million in criminal fines and civil damages and penalties. It involved an extensive aspect concerning the mispricing of spare parts. There were false claims. There were two different companies involved, Davie Compressor and the Falso Co. All of these things made it a good opportunity for the special unit to work with the U.S. Attorney to make the prosecutions and to develop techniques which then could be used as a part of the training for other U.S. attorneys. It is the kind of case both in its extensiveness and in the way in which the unit did work with the U.S. attorney that helped build experience.

I think that you are going to find that there is going to be a variety of techniques employed by this particular unit. Its primary role will be as it is today, going after not just one but many large contractors, as well as providing a basis for improving the capacity of local U.S. attorneys to handle these fraud cases.

Senator GRASSLEY. Well, I would just like to add that my information is that this particular case, Davie Compressor, was a case that the contracting officer pretty much put together himself. In other words I am saying it was kind of a simple case. It was documented well before the fraud unit got involved, and I guess I do not understand that this is the type of a case that would fall into the category of cases that the unit was set up to handle.

I would like to again state what the DOJ has said about the purpose of the unit; to conduct large, complex and technical cases, not unlike the alleged shipbuilding false claims of the latter seventies which totaled in the billions of dollars.

Now, 10 of the fraud unit's listed convictions are related to a bribery scheme uncovered at the Defense Industrial Supply Center in Philadelphia. Most of these cases involve small contractors and have resulted in a relatively small amount of fines. While the investigation and prosecution of those involved in this scheme is to be commended, I am wondering why these cases are being handled by the special fraud unit and why do they comprise more than half of the total number of the fraud unit's convictions? Were these cases so complex and so nationally significant that the U.S. Attorney there could not handle them without the aid of the unit?

Attorney General MEESE. Senator, I cannot second-guess the unit in picking this case, but I do know that bribery cases are seldom uncomplicated. This was an extensive case that involved four Government employees, it involved four different contracting officers, it involved two separate contractors. It seems to me it is the kind of case that in its initial stages the fraud unit would go after, particularly again as a means of demonstrating techniques that could be then utilized by the U.S. attorneys. I do not see any problem at all with them doing this.

If, on the other hand, they restricted themselves to these kinds of cases, that would be something else, but they do not.

Senator GRASSLEY. Well, as so often happens——

The CHAIRMAN. The Senator has run over. I have indulged you. Are you about through your questions?

Senator GRASSLEY. Yes, I will take 2 more minutes. Asking questions seems to have provoked even more questions in my mind and, of course, I intend to pursue them further. My concern is not solely with the record of the Defense Procurement Fraud Unit but with the state of our entire system of investigation and prosecution of defense procurement fraud.

I would be the first to hail the stated purposes for the establishment of this fraud unit. A centralized task force is necessary for coordination and expertise in large and complex cases. But more important, the Federal Government should have a law enforcement unit not only willing and able, but directed and mandated to aggressively pursue complicated cases against huge defense contractors, the cases that some U.S. attorneys may be hesitant to pursue with any aggression due to local political pressures, those cases that break ground on the prosecution of defense procurement fraud, and most important, the cases that will send a clear and convincing message of deterrence to the sometimes arrogant defense industry that it is no longer business as usual. In other words to send out a message that we are no longer going to play their

game of "catch us if you can." We need an enforcement team whose actions transmit instead as "We'll will catch you if you do."

If the fraud unit's record showed it had fulfilled its objective, I would be praising instead of questioning today. Unfortunately the fraud unit record seems to show that its efforts are in the opposite direction of its goal. Instead of complex cases, it seeks a noncomplex, instead of major contractors it goes after the small contractors, instead of aggressive court room prosecution it favors pretrial settlements in 9 out of 10 cases, and instead of sending a deterring crackdown message to the defense industry it seems to send a comforting signal to the major contractors that chances are they will not get stung. And even if they do, the sting is going to be mild and it is going to be momentary.

Attorney General MEESE. Senator, I think your conclusions are flat wrong. I think that——

Senator GRASSLEY. I guess I hope I am. I really hope I am, but I do not think I am.

Thank you, Mr. Chairman.

The CHAIRMAN. We are really off the subject. This is a Department of Justice authorization hearing. Senator, if you want to go into those matters, you had better set up a special investigation.

Senator GRASSLEY. Well, Mr. Chairman——

The CHAIRMAN. And I want to say to the rest of the members that today we are considering the Department of Justice authorization, and if we can stick to that today and any other matters you want to bring up at the appropriate time, of course, we can have——

Senator GRASSLEY. Mr. Chairman, could I just comment on what you said, and there is nothing wrong with what you said. But there are 13 attorneys, there are 5 investigators, there is 1 auditor, and there are 3 support staff spending at least $442,000 in this budget involved with enforcement and carrying out a charter purpose that I do not think they are carrying out. And I think it is very legitimate.

The CHAIRMAN. Would you like to have a special hearing on this matter? If so, we will approve it.

Senator GRASSLEY. Well, thank you very much, and I may avail myself of that opportunity.

The CHAIRMAN. The distinguished ranking member, Senator Biden.

Senator BIDEN. Thank you, Mr. Chairman.

I compliment the Senator from Iowa and would say that—and I am not being solicitous when I say this—that the attention that is being mounted up here on Capitol Hill against greedy defense contractors comes from the Senator from Iowa, and I mean that sincerely. It is amazing how, if one Senator, or one Congressperson, or several decide they are going to make it their business and pursue it doggedly, how things begin to change, and I would encourage the Senator, and, as ranking member, I would be delighted to participate in requesting special hearings, and I would be delighted to pursue this issue with him and follow his lead on this. And I have no doubt that the Attorney General is kind of being put in the hot seat here for what he was not responsible for—coming up here and

have to suggest whether the unit did or did not do its job is a more difficult spot.

But it seems to me that most people acknowledge that we are talking about fraud and abuse in the Defense Department and are talking about billions of dollars. It is important that the unit in the Justice Department pursue these cases vigorously.

I guess what some of us have been awakened to by the Senator from Iowa over the last couple of years is that we are talking about at least hundreds of thousands and probably millions of dollars that I think defense contractors have—if Al Capone were still alive, he would change his analogy from lawyers to defense contractors when he said that lawyers can steal more with a briefcase than he can with a machinegun—well, clearly, defense contractors can steal more with a contract than most thugs can steal with a machinegun.

But I want to get to another group of thugs, if I may.

Attorney General MEESE. Senator, it should be noted for the record that this is the administration that has started the prosecution of these defense contractor frauds, that has been discovering these abuses, and has had a better record than any other administration in history in taking action against this kind of fraud and abuse, and we will continue to do so.

Senator BIDEN. And without asking you to guess, I am willing to bet that you are right, that in the very near term you will be moving forward with some major cases against some of the larger defense contractors.

What I would like to move to though, if I may, is one part of the business of this hearing that relates to the drug enforcement side. We are charting new ground here, new ground that we had slight disagreements on as to how it should be set up. But, in fact, there is a new law, thanks to the signing by the President of the United States, that creates a National Drug Enforcement Policy Board, and as the press and others, myself and others have referred to it in the past as the so-called drug czar, and you are the drug czar to the extent that such a handle applies at all to being the chairman of the National Drug Enforcement Policy Board.

I realize we are at the very beginning stages, and I do not expect things overnight, but I read in a publication put out—to be very blunt, my staff pointed out to me in a publication published by the Justice Department under Attorney General Smith that the so-called drug provision, which is the provision relating to the National Drug Enforcement Policy Board stated,

> Essentially codifies the existing drug enforcement coordination mechanism that was previously created by the establishment of the Cabinet Council on legal policy.

My question to you, General, is that your interpretation of how the Congress intends for you and other board members to carry out your duties in developing, carrying out a coordinated and encompassing drug enforcement strategy? Do you see any difference between the law we passed and the way business was conducted by the Cabinet Council on legal policy.

Attorney General MEESE. Well, essentially what Attorney General Smith said in that statement was that it codifies the organizational mechanism that we have used for a long time. The Cabinet

Council on legal policy has essentially the same members as does the statutory Drug Enforcement Policy Board. I think that there is an additional responsibility which has been given to the Board, namely the analysis of the budgetary resources going into the drug war. This is something we will be reviewing assiduously.

The first meeting of the Drug Enforcement Policy Board will take place, I believe, on the 24th of April. There will be regular meetings and the activities of the board will go forward as has been discussed with you and other Members of the Senate, as well as the leader in this fight in the House.

I think that we have in the past four years devoted more resources to the fight against drugs than ever before in history. We have a greater allocation of resources from new departments of the Federal Government that were not previously involved, and we have a better coordination of resources than we have ever had. We intend to use the Drug Enforcement Policy Board to build on this very good start of the past 4 years, so that we can continue to expand our efforts in fighting the drug trafficking.

Senator BIDEN. That is reassuring to hear and I would suggest that you have a very good record, and it has been a more aggressive pursuit than any administration previously. I also want to compliment you for meeting with the Mexican Attorney General last week and congratulate you on taking the lead on dealing with the problems we have there.

Attorney General MEESE. Thank you.

Senator BIDEN. Let me ask you about the meeting on the 24th. Will that meeting of the board be attended by Cabinet-level members or their staff?

Attorney General MEESE. Yes. As a matter of fact, the reason that it is being held on that day is that we have canvassed the Cabinet members to be sure that they can be there personally——

Senator BIDEN. Good.

Attorney General MEESE [continuing]. And that is our plan, to have the Cabinet members attend themselves rather than sending representatives.

Senator BIDEN. Good. One other thing, Mr. Meese. I asked my staff to look at the two volumes you all submitted to us that make up the Department's fiscal 1986 budget request, I am told by my staff that there was not a single word regarding the National Drug Enforcement Policy Board, there is nothing regarding the priority of this program in the Department or any mention of the personnel assigned to work on this or even mention of it being the responsibility of the Attorney General. Could you tell the committee what your plans are regarding staffing this operation and the initial work projects you expect to undertake?

Attorney General MEESE. Yes, Senator. It is perfectly understandable and not at all surprising that that would not be included in the budget as a separate item, just as there are many activities of the Department that are carried out and not specifically mentioned in the budget materials. But we will have adequate staffing to support the work of the Board, both the analytical and the administrative. The staffing will be drawn partially from resources within the executive offices of the Justice Department—the Attorney General, Deputy Attorney General, and Associate Attorney

General's offices—as well as from from DEA and the FBI, and partially from other agencies that are involved.

We do not think that this effort requires a large staff per se. It will have an adequate staff, and we will draw upon other resources, particularly for things like budget analysis and so on.

Senator BIDEN. I would not think it would need a large staff either, but could you tell us now when you expect you would be able to outline for the committee not just in general terms but specifically what the organizational makeup and who the personnel are to be assigned and what their functions are?

Attorney General MEESE. Yes, I would be able to do that sometime after the April 24, when we have our first meeting.

Senator BIDEN. Thank you. Now, do you have a timetable as to when you expect we will get for the first time ever a drug enforcement strategy that encompasses the budget priorities for all the Cabinet departments and the department agencies currently involved in Federal drug enforcement?

Attorney General MEESE. Senator, we have a drug enforcement strategy right now which is a very remarkable document and which has been very effectively implemented. Again, it is the first time that we have gone forward with the international efforts such as we have at the present time. The strategy will be analyzed in terms of the combined budgetary resources being put into the drug program from the various departments. We will also be submitting a report—I believe one is required in July of this year. I may not be exactly correct on the date, but in that report we will provide that information to this committee and to the Congress.

Senator BIDEN. Well, let me just—I will not take the time of the committee at this moment, but is this the strategy report you are referring to?

Attorney General MEESE. Yes.

Senator BIDEN. Which came out in September 1984 for the year 1984. I realize you are busy--one of your people could possibly tell us why it took so long to come out. Theer are reasons why I don't think this document is good as you might think it is but I say this not to be critical, but constructively. It is a different ball game now. This will be your report and strategy put out under some additional authority you will have that did not exist before. So I would just like at another time to be able to discuss this——

Attorney General MEESE. I would be happy to discuss it with you, Senator, but I think it is a remarkable document. It is the first time that there has been a national strategy——

Senator BIDEN. That is true.

Attorney General MEESE [continuing]. That combines enforcement, international activities, the health, prevention, treatment, research and educational activities into a single combined strategy. We have these departments working together. That has never happened before.

Senator BIDEN. Well, what I would rather do is what the chairman and I have done. The chairman and I early on, when I took over this responsibility at the same time we took on his new responsibilities, decided that we would not spend time talking about what we did not agree on, we would just put that aside and we

would spend time talking about what we agree on to see if we can get something done.

So rather than argue about whether or not it is remarkable or not, I withdraw my comment on its not being remarkable and let it stand. I would just like to talk to you about what I think and others up here think, what we hoped would be the consequence of the law that we passed in terms of a tighter drug strategy. It is not saying you have not been doing a good job, it is not saying that there hasn't been progress made. It is merely saying maybe we have some ideas that you might find useful.

The last question——

Attorney General MEESE. Let me just say, Senator, that I would welcome your ideas and I would be happy to talk with you in that regard.

Senator BIDEN. The last question I have is—like many of my colleagues here, I guess all of us are getting to be kind of oldtimers in the Senate here, we were all here at the time or close to the time when we amended the DCI, the Director of Central Intelligence. We put forth enabling legislation to allow that to take place. Quite frankly, for over a year it basically floundered until there was an Executive order—and no one knows Executive orders better than you, particularly what impact they have—until there was an Executive order that really delineated who would do what and how.

Is there any consideration at this moment on your part to request the President or submit to the President an Executive order that would in fact serve as the implementation legislation for the National Drug Enforcement Policy Board?

Attorney General MEESE. I think, Senator, if an Executive order is needed as opposed to rules of procedure for the Board, then we will request that. At this point we have not seen any need for an Executive order. There will be some directives and some procedural documents that will be part of the work of the Board, but if we feel for any reason that an Executive order is needed we will certainly ask the President for one and I am sure we will get one.

I think the difference now from what happened in 1947 is that we do have an ongoing Cabinet system where it is not at all unusual for the Cabinet officers to be working together in carrying out these——

Senator BIDEN. I'm sorry, what I was referring to was in the seventies, when we amended—I was not around in 1947, you are right. I was wondering why you were looking at me that way. No, I am talking about in the seventies, as a consequence of the Church committee, where we reorganized the intelligence community, which honestly did not move very far until the President through an Executive order implemented those changes. Obviously, all those agencies have been in existence—and, by the way, all of them argued that they had already been coordinating, and there was no need.

But if I can just mention one part of the Executive order, since I am keeping in step here by going over like everyone else in their time, it would seem to me that, if for no other reason than to amend Executive Order 12368, which sought to coordinate drug policy, you are probably going to need a clarifying document. At any rate, I have exceeded my time. I ask because we have a

markup in the Foreign Relations Committee on the authorization on little noncontentious items like the Middle East, Greece, Turkey, Nicaragua, and others, and I will have to go up there, but I would like to ask permission, Mr. Chairman, if I can submit for responses in writing a series of questions I have to the General on this and other subjects?

The CHAIRMAN. Mr. Meese, if you would answer those——

Attorney General MEESE. I would be happy to.

Senator BIDEN. Thank you very much.

Attorney General MEESE. Thank you.

The CHAIRMAN. The distinguished Senator from Kentucky.

Senator MCCONNELL. Mr. Attorney General, just one question. As a person who for the last 7 years was the chief executive officer of local government which had in its array of programs a juvenile justice facility for children who committed serious enough crimes to be detained and also a number of alternatives to detention, I must tell you that I am a bit concerned about the fact that this is the 3d year in a row that the Office of Juvenile Justice and Delinquency Prevention has been zero funded by the administration.

I read with interest that portion of your testimony in which you indicated that even though the separate line item had been eliminated in the amount of $67.6 million, the funding would be available for those programs through the justice programs appropriation. Could you just tell me what the philosophy of this administration is with regard to programs for juveniles and why this pattern persists year after year?

I know that we have a deficit problem. I am fully aware of that, but there seems to be a good deal of antipathy down in the bowels of the Department toward juvenile justice programs and I know some of the people and I think I am right about that. I do not like it and I am wondering what your attitude about that is.

Attorney General MEESE. Senator, the Office of Juvenile Justice and Delinquency Prevention would be continued. The grants would be eliminated as a separate line item. The grants under the general Bureau of Justice Assistance, which is a new entity within the department as part of the Comprehensive Crime Control Act, would include juvenile programs under those allocations and grants. We would still maintain an emphasis within the department on those things that are properly a part of the Federal role. This is really at the State and more particularly at the local level.

What we want to do is be sure that in those areas where we can provide grants to stimulate activity at the local level, we have a basis for doing that through the general assistance grants.

In addition to that, we have and are going forward with the coordination of Federal efforts from the various departments of the Federal Government that are involved in this. These efforts will continue to be coordinated by the Office of Juvenile Justice and Delinquency Prevention. In fact, just prior to coming to this hearing this morning I attended the quarterly meeting of that Federal coordinating council to indicate the priority and the importance that we attach to it.

Senator MCCONNELL. I might say that I think you have done an outstanding job of setting up the Missing Children's Center and your activities and funding commitments to that particular aspect

of children's programs, which is my special interest. I am going to have to delve into this a little further and be convinced that you really do not have antipathy for these programs. I know you can make a states rights argument against some of these funding programs, but I am on balance more concerned about the programs than I am some argument about States rights.

Attorney General MEESE. I do not think it is a matter of States rights as much as it is what we can properly do and do effectively at the Federal level, and that is what we are interested in doing. I happen to have been involved in the Juvenile Justice Programs going all the way back to 1975 when I served on the National Advisory Committee for 2 or 2½ years, and I felt at that time a great deal of Federal funds were wasted with rather insignificant and inconsequential grants to a lot of private contractors who made money with very little effect on the juvenile justice problems of the country.

What we are trying to do is allocate the resources so that we get a Federal leadership role, and a federal clearing house responsibility, as to those things we can do, such as the Central Information Search Program for Missing Children. These are the kinds of things we can do on a national level, including providing leadership to State and local governments. But this does not require large amounts of money. It requires using the money that we have appropriated carefully and wisely, and I would be very much interested in your ideas and working with you on this.

Senator MCCONNELL. Well, I think you are right, it is not very costly, particularly the Missing Children's Center funding or something like $10 million a year for 3 years. It is not a big item.

Thank you, Mr. Attorney General. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

The distinguished Senator from Vermont.

Senator LEAHY. Thank you, Mr. Chairman.

General Meese, I apologize for being a little bit late but I was in your home State of California this morning and rushed back here so I could be here to say hello to you.

I have a number of questions, some of which I will submit for the record, but I want to ask you about a matter that happened the last day, the terrible event that happened in East Berlin. Very shortly after the American soldier was murdered in East Berlin, I was called and briefed on that, and I was very angry when I first heard about it and I got angrier and angrier. In fact, this morning coming back from California on the plane, if the plane had run out of fuel, I think the plane could have kept on going on just how angry I felt.

There is no question at least in the briefing that I got shortly after the incident and everything I have read since in the papers, there is no question that he was acting within his rights, no question that he was doing something that had been acceptable behavior in East Berlin ever since World War II, something that has been acceptable behavior for the Soviets to do in West Berlin since World War II.

I am not suggesting that the Justice Department do anything about East Berlin, but there is another area. Last year I introduced legislation which finally passed in the form of a resolution to urge

this country to start establishing some type of reciprocity with other countries, especially the Soviet Union and the Soviet bloc. In other words, they have x number of people with diplomatic immunity in the United States and we have x number in their country.

Right now, of course, the Soviet Union has many, many, many times as many people in this country with diplomatic immunity as they allow us to have over there. That is not even counting the United Nations, where they have—I mean it is just riddled with people, it has been in the open press, I disclose nothing by pointing this out—it has been in the open press that they have a massive contingent of KGB people in the United Nations—not even counting that, that is a separate thing, talking just about what they have here.

It seems that we—you know, the Soviets can do anything they want and we will protest and kind of wring our hands and they get away with it. We built our Embassy—and these decisions were long before your administration, so I do not want you to take any of this personally—but we built our Embassy in a swamp over in Moscow with the worst living conditions imaginable and our people are treated like absolute dirt in the way they have to live over there. The Soviets put in a brick a day. They put Monday's brick on today and then we will get Tuesday's, and they will put Wednesday's brick on—in the meantime, we allow them to build an Embassy up on Wisconsin Avenue which, if the KGB designed a spot, they could not have found a better spot, we just let them do that. They have got all their big antennas, some pointed at your office, some pointed at the Pentagon, some at the White House, the CIA, and everywhere else. They have got a wonderful spot.

They live far better than they are ever going to live in their own country, and I think quite frankly laugh up their sleeve when they see this happen.

Now, I am going to introduce again this year binding legislation for reciprocity, the Leahy reciprocity law. It cannot, of course, take effect immediately, but it will phase in eventually so that we will have the situation where the number of people the Soviets have with diplomatic immunity or immunity from arrest in this country will be the same number as we have over there. We will be able to operate on some level of equality.

Now, I have discussed this at hearings in other committees with Director Webster, again discussing things that have been stated in the open, in open hearing. You do know that he has a very difficult time. He has his hands full. I think he does a superb job, but he has his hands full. I mean the Soviets just flood people in here, they have all got diplomatic immunity. You cannot even keep track of them all, there are so many.

How do you feel, Mr. Attorney General, of us going to a law that would mandate that if they have 100 people over with diplomatic immunity, then we have 100. If we cannot have any more than 100, they cannot have any more than 100, and that is not even counting the United Nations.

Attorney General MEESE. Senator, I share your frustration over the events of the past few days particularly and your frustrations generally about the activities of the KGB and the Soviet Union in regard to their intelligence efforts within this country.

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This is a topic that is a previous incarnation in the Government I discussed——

Senator LEAHY. Excuse me, Mr. Attorney General. Somebody just handed me a note—and this is part of the problem of flying half the night—I referred to Director Webster as the Attorney General. There was not a palace coup while you were testifying here, I want you to know. I apologize for that.

Attorney General MEESE. Not at all. I understood.

Senator LEAHY. Fine.

Attorney General MEESE. I discussed this in earlier days when I was serving as Counsel or to the President and then, as I am now, as a member of the National Security Council, with the Secretary of State. These are difficult, complex, and very sensitive matters, and I think it would be improper for me to specifically answer what position I would take on your legislation except to say that it is a matter that I would like to discuss with, and I am sure we will be discussing with, the Secretary of State to see if we cannot come into a better balance between what is done in this country and what is done in the Soviet Union.

It is, as you point out, a problem for our foreign counterintelligence agencies in this country to try to cope with this large number of Soviet personnel in the country. Just the sheer numbers are overwhelming. Beyond that you have the tremendous difference between the open society that we enjoy, where almost everything is available to them, and the very closed society that is imposed upon people of the Soviet Union where it is very difficult to get information.

So I share the frustration. I would be very happy to review the legislation you are introducing and would certainly want to discuss it with the Secretary of State before giving you a definitive answer.

Senator LEAHY. I understand and I would not give a different answer if I were in your place. I would give precisely the same one. But understand my frustration, and it is one shared by Senators obviously on both sides of the aisle. It is nothing that I claim any sole proprietary rights to. I am perfectly willing to listen to any suggestions of how it might be drafted, but the legislation in some form will be introduced and I do it partly because I think it is the sort of thing that the Soviets understand.

I mean had we made the decision—and again this was before your administration, so I do not want—it is not a criticism of you, but had we made the decision, for example, in the Embassy, you know, your first floor will go up as our first floor goes up on our Embassy, and your second floor will go up as our second floor goes up, our people in Moscow would be in far better shape today.

This is the sort of thing the Soviets understand. You know that and I know that—push equally hard. So let us hope we will do that.

One other question, Mr. Attorney General. During hearings I conducted last year, Mr. Keeny of your Department testified about the fact that the Wiretap Act of 1968 does not cover data transmission. Do you feel that is a significant loophole in the law insofar as so much that we send across our communications networks now is data?

Attorney General MEESE. Well, I think it may be that we would want to amend the law. This is something the Department has been reviewing, as Mr. Keeny mentioned to you. It is not a loophole that we intend to take advantage of as far as the Department is concerned, but it is something the general aspects of which we are reviewing, I think we would be happy to respond to you more directly as to the result of our analysis and whether we think additional legislation is needed.

Senator LEAHY. Would you please, because I know that this is also a concern within the private sector. So much of what companies send from branch to branch are data transmissions, and a rival company can pick that up, under at least one reading of the law, could just pick that up and they violate no law in doing so. We have got to tighten that.

Mr. Chairman, my time is up but I do have a question on drug trafficking that I would like to ask, however.

The CHAIRMAN. Go ahead.

Senator LEAHY. Thank you, Mr. Chairman.

I join with Senator Biden and Senator Thurmond and others in commending you and your strong views on drug trafficking. You and I in previous incarnations shared background experiences, in fact you would have no reason to remember this, but I once met you back when I was a prosecutor and I was in California speaking to a prosecutors' group and you were at that meeting, it was with the National District Attorneys Association.

What I am worried about—and this came up in the Appropriations Committee the other day, I serve on the Foreign Operations Subcommittee there, and we give a lot of money in foreign aid and a lot of that is well worthwhile, and a lot of it we have to do, and a lot of it I think we kind of grit our teeth and do, but we have got governments accepting our foreign aid and then they give lip service to our efforts to eradicate the production and shipment of narcotics to the United States and elsewhere.

I saw as a prosecutor what that did to a lot of our young people especially. It is a hideous thing. You must feel a certain frustration. You make enormous seizures of drugs, I mean the kind of seizures of drugs we see today is something that I never even dreamed of back when I was a prosecutor, but it keeps on coming and these countries take our foreign aid and send the drugs.

What I would like—you could have somebody in your department—come and talk to me about this, you know, what can we do? Again, I do not want to step into something which may be as much the State Department's responsibility as yours, but you know, it is an increasing frustration, and we are just going to say to hell with it, if they are not going to stop the drugs why should we send our money to those countries, no matter what the reasons, they are going to accept it and give lip service to it, keep sending the drugs in, then why should we send the money.

So it is not really a question because it is not something that you can clearly answer here today, but please have someone come in and talk to me about it because again it comes out of the frustration and what do we do to stop it.

Attorney General MEESE. I would be happy to have someone talk to you, Senator. We have, however, made tremendous strides in

persuading other governments to be more aggressive in their activities against narcotic trafficking again than ever before. I admit that it is still a tremendous problem. There are great quantities of narcotics coming into the country, but we now have better cooperation with virtually every drug producing and exporting country than we ever had before, including such places as Colombia. Recently we had the first conviction based upon an extradition from Colombia. In the Golden Triangle in Asia, Governments are actually moving against and even losing soldiers in the battle against the traffickers themselves. Also, we are getting a great deal of cooperation in Central America.

I am not saying that we have licked the problem, we certainly have not, but we are making some valuable strides and I would be happy to have our people talk with you further.

Senator LEAHY. And you deserve the praise and the thanks of every single American for those strides. Thank you.

Attorney General MEESE. Thank you.

Senator LEAHY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

The distinguished Senator from Alabama.

Senator HEFLIN. Welcome, Mr. Meese, in your capacity as Attorney General to this committee. Your appearance here is a little different. You seem a little bit more relaxed today than in your previous appearances and we are delighted to see you. Congratulations on your confirmation, and we are looking forward to working with you in the Department of Justice.

Attorney General MEESE. Thank you, Senator.

Senator HEFLIN. I have an opening statement that I would like to have made a part of the record.

The CHAIRMAN. Without objection, it will be done.

[The statement of Senator Heflin follows:]

STATEMENT OF SENATOR HOWELL HEFLIN
DEPARTMENT OF JUSTICE AUTHORIZATION
MARCH 26, 1985

MR. CHAIRMAN:

AMERICANS RELY ON THE DEPARTMENT OF JUSTICE AS THE CHIEF LAW ENFORCEMENT ARM OF THE FEDERAL GOVERNMENT. I TAKE VERY SERIOUSLY OUR RESPONSIBILITY AS MEMBERS OF THE JUDICIARY COMMITTEE TO OVERSEE THIS AGENCY, AND I LOOK FORWARD TO WORKING WITH ATTORNEY GENERAL MEESE AS HE ENDEAVORS TO CARRY OUT THE ENORMOUS RESPONSIBILITIES ENTRUSTED HIM BY THE AMERICAN PEOPLE.

TODAY WE ARE FOCUSING ON THE PRESIDENT'S BUDGET REQUEST FOR THE JUSTICE DEPARTMENT. I HAVE CONCERNS AND PRIORITIES REGARDING THE BUDGET, AS I KNOW ALL THE SENATORS DO. I WOULD LIKE TO FOCUS TODAY ON ONE PARTICULAR AREA OF GREAT INTEREST TO ME, THE STATE OF ALABAMA AND THE NATION -- THE DEPARTMENT'S EFFORTS TO STEM THE TIDE OF TRAFFICKING IN ILLICIT DRUGS.

THIS CANCER ON OUR NATION HAS DEEPLY CONCERNED ME ALL THE YEARS I HAVE SERVED IN THE SENATE AND IS OF PARTICULAR URGENCY TO ME TODAY.

LAST YEAR, THERE WERE MORE DEATHS FROM HEROIN OVERDOSES THAN EVER BEFORE. AMERICANS ARE FINALLY REALIZING THAT ADDICTS DO NOT ONLY HARM THEMSELVES -- THEY FINANCE THEIR $1,000 A DAY HABITS AT THE EXPENSE OF INNOCENT CITIZENS. A RECENT STUDY REVEALED THAT 243 HEROIN ADDICTS COMMITTED ALMOST 500,000 CRIMES OVER AN 11-YEAR PERIOD. OTHER STUDIES HAVE SHOWN THESE ADDICTS AVERAGING APPROXIMATELY ONE CRIME PER DAY. THESE MIND-BOGGLING FINDINGS HAVE BEEN SUPPORTED BY STUDIES IN OTHER CITIES.

THE PICTURE IS NOT ENTIRELY BLEAK. IN THE 98TH CONGRESS, WE CREATED SOME EFFECTIVE NEW WEAPONS FOR THE WAR AGAINST

DRUG TRAFFICKING AND ABUSE. LEGISLATION WAS CONCEIVED, DRAFTED AND ENACTED TO STOP THE ILLEGAL CASH FLOW TO COUNTRIES WHOSE OFFSHORE BANKING SYSTEMS SERVE AS HAVENS FOR ILLEGAL DRUG PROFITS, TO INCREASE SENTENCES FOR DRUG SMUGGLERS, TO REQUIRE DEFENDANTS TO SERVE THEIR ENTIRE SENTENCES WITHOUT THE OPPORTUNITY FOR PAROLE, AND TO ALLOW FOR CONFISCATION OF THE TOOLS OF THE DRUG TRADE --THE SHIPS AND AIRPLANES THAT CARRY THE DEADLY CARGO AND THE CASH TO MAKE THE PAYOFFS.

I HAVE SUPPORTED LEGISLATION TO PROHIBIT ALL FOREIGN AID, EXCEPT FOOD AND MEDICINE, TO ANY COUNTRY FAILING TO TAKE ACTION TO PREVENT OPIUM AND ITS DERIVATIVES FROM BEING PRODUCED OR REFINED FOR EXPORT TO THE UNITED STATES. I CONTINUE TO BELIEVE THAT WE NEED DRASTIC MEASURES LIKE THIS, AND I WILL SUPPORT SIMILAR INITIATIVES IN THE FUTURE.

TODAY, HOWEVER, I WOULD LIKE TO FOCUS ON ANOTHER ASPECT OF THE WAR AGAINST DRUGS -- PROTECTION OF THE INTEGRITY OF OUR BORDERS. PRIOR TO YOUR CONFIRMATION, I MET WITH YOU TO CONVEY MY CONCERN THAT THE SUCCESS OF THE SOUTH FLORIDA TASK FORCE IN INTERDICTING DRUGS HAS HARMED NEIGHBORING STATES. PLUGGING ONE HOLE SEEMS TO HAVE JUST SHIFTED THE TRAFFIC ELSEWHERE. THE MOBILE, ALABAMA, DISTRICT, WHICH INCLUDES THE GEORGIA AND MISSISSIPPI COASTS, IS NOW CONSIDERED THE KEY CORRIDOR FOR DRUG TRAFFICKING. ALABAMA HAS BECOME THE TARGET OF WAVES OF SHIPS AND AIRCRAFT CARRYING LITERALLY TONS OF ILLEGAL DRUG INTO OUR STATE USING ALABAMA'S MANY ISOLATED AND ABANDONED AIRSTRIPS. FAR FROM BEING MERELY A LOCAL PROBLEM, HOWEVER, TWIN ENGINE AIRCRAFT SMUGGLE TO POINTS 200 MILES OR MORE INLAND -- AS FAR AS TENNESSEE, WEST VIRGINIA AND ARKANSAS. THESE DRUGS ARE THEN REFINED AND DISTRIBUTED IN THE NORTHEAST AND MIDWEST -- MAKING THE INTEGRITY OF THE GULF COAST AN ISSUE OF NATIONAL IMPORTANCE.

THE UNITED STATES CUSTOMS SERVICE HAS INDICATED THAT THERE MAY BE AS MANY AS 18,000 FLIGHTS A YEAR SMUGGLING

COCAINE INTO THIS COUNTRY. OF THIS NUMBER, THEY ESTIMATE THAT APPROXIMATELY 200, OR 1% ARE INTERCEPTED.

STATE RESOURCES ARE WOEFULLY INADEQUATE TO CONTEND WITH A WELL-FINANCED INTERNATIONAL CRIMINAL NETWORK. WE NEED THE HARDWARE AND THE RESOURCES TO STOP THIS INFLUX WHICH IS CONTAMINATING OUR STATE AND POISONING OUR NATION.

ONLY THE FEDERAL GOVERNMENT HAS THE RESOURCES AND JURISDICTION TO SUCCESSFULLY SEAL OUR BORDERS. TO HALT THIS FOREIGN INVASION, WE MUST PATROL AND CONTROL OUR BORDERS. WE CAN'T RELY ON FOREIGN GOVERNMENTS TO TAKE THE INITIATIVE. WE MUST SOLVE THE PROBLEM OURSELVES, AS A NATION, AND WE HAVE THE RESOURCES TO DO IT. IT SIMPLY DOESN'T MAKE SENSE TO USE A SCATTERGUN APPROACH AMONG FEDERAL AGENCIES AND TO SEND A FEW PLANES TO FIND THOUSANDS.

I AM EXTREMELY ENCOURAGED BY THE INTRODUCTION OF THE DEPARTMENT'S NATIONAL NARCOTICS BORDER INTERDICTION SYSTEM, WHICH EXPANDS THE SOUTH FLORIDA TASK FORCE INTO A NATIONAL ORGANIZATION. WE DESPERATELY NEED COORDINATION OF ALL FEDERAL LAW ENFORCEMENT AGENCIES AND OUR MILITARY SERVICES IF WE HOPE TO DEFEAT THIS SOPHISTICATED, INTERNATIONAL CRIMINAL NETWORK.

I AM PLEASED TO NOTE THAT THE DRUG ENFORCEMENT ADMINISTRATION HAS INCREASED ITS PARTICIPATION WITH LOCAL LAW ENFORCEMENT OFFICIALS, PARTICULARLY THE ALABAMA BUREAU OF INVESTIGATIONS. I HOPE THAT THIS COOPERATION WILL CONTINUE AND EXPAND UNDER YOUR DIRECTION.

Senator HEFLIN. It largely deals with some of the same matters that Senator Leahy was mentioning. Congress has responded to the drug problem, and on its own initiative has taken a lot of action recently, such as enacting legislation to stop the illegal cash flow to countries whose offshore banking systems serve as havens for illegal drug profits, to increase sentences for drug smugglers, to require defendants to serve their entire sentences without the opportunity for parole and to strengthen the laws pertaining to confiscation of the tools of the drug trade: the ships and airplanes that carry the deadly cargo and the cash to make the payoffs.

I might say from my observation that Congress is also taking steps even in the criminal law area relative to certain procedural requirements that might prevent a conviction because the police didn't have a search warrant, but the new laws on confiscation of ships and airplanes are unique. There has been a considerable step-up in fighting drug crime that I think will be beneficial to the Department of Justice as well as the public as a whole.

Following up, too, on what Senator Leahy was saying I introduced legislation in the last Congress to prohibit all foreign aid except food and medicine to any country failing to take action to prevent opium and its derivatives from being produced or refined for export to the United States, and I do think in your capacity as Attorney General your voice in the Cabinet and your voice in foreign aid determinations and in determination of our relationships with other countries can be very helpful in bringing about increased cooperation by those countries that prepare and ship illegal drugs to the United States.

I have spoken to you previously about this, and I want to focus again today on what is happening on the Gulf Coast in Mississippi, Alabama, Louisiana, Georgia, which we call the Mobile Corridor. Because of intensified efforts through the aid and assistance of an amendment to the Posse Comitatus Act, which allows military facilities to be used to help detect illegal planes and ships coming in, and because of the increased activity of the Coast Guard, drug smugglers have moved away from the Florida coast in many instances and are going into the Gulf Coast. Late at night, these smugglers fly planes below the radar detection level, to rural airports in inland Alabama, Georgia, Mississippi, and Louisiana, met by trucks, which causes quite a problem. Many rural airports are not within the jurisdiction of the city and they fall into the category of the sheriffs' department and may be 20 to 30 miles to the county seat. All of this needs to be looked at and particularly the Mobile corridor, to see what you can do to stop the importations primarily by planes.

Some of these planes are landing as far inland as 200 miles. Normally, however, they land about 100 miles inland from the coast. In addition, there is still boat traffic coming in in that area, and according to the law enforcement officers in that area, it has substantially increased in recent months and, indeed even in recent weeks. We hope that you will give some particular attention to this problem.

I know that you have discussed this with me and are fully conversant with this problem. What are your current plans in this area?

Attorney General MEESE. Senator, we are now assessing the effectiveness of the interdiction efforts and one of the things I will be doing in the very near future is going to our El Paso intelligence center to review this with the people there so as to determine how we can do a better job of identifying these light aircraft that fly low providing continued surveillance, and ultimately apprehending them.

We have been much more successful in obtaining resources from the military services, both in terms of Air Force radar and surveillance planes, as well as the Army helicopters that can keep up with these small planes and apprehend them when they do land. But I will certainly look into this, particularly in the area that you discussed.

Senator HEFLIN. At Ft. Rucker in Alabama, which is about 75 miles inland from the coast, the helicopter training center for the Army and the Air Force combined is located. There is a tremendous number of helicopters in that area that could be used and have been used in some instances. I just recently talked with the commanding general, General Parker, relative to cooperation in this area. He says that they are there and, of course, they could be used for surveillance on some type of a planned program with the Department of Justice, the Drug Enforcement Agency, as training exercises for the pilots being trained there. That, of course, is important.

There has been legislation introduced to make available certain types of planes. There are many types of AWACS planes that could help, too, in this sort of thing, and it could be used as a military training program for military operations of the future. Similar missions have been flown in the past, and the training could be helpful if history is any indication.

We appreciate your interest in this matter and hope that you will give particular attention to this problem. I have high hopes. You have a background of law enforcement that has rarely been seen in the Attorney General's office and an awareness of the problems and we look forward to working with you and hope that you call on us for assistance if we can be of help to you.

Attorney General MEESE. Thank you, Senator. I certainly will.

The CHAIRMAN. Thank you.

Mr. Meese, I have a good many questions here. I think I will just ask one and let you answer for the record, if that suits you all right.

Many of us have been involved in the efforts to reform Federal immigration laws in the 97th and 98th Congresses. What are your thoughts on how we might achieve enactment of these changes in the 99th Congress? We almost got a bill last year.

Attorney General MEESE. Senator, we hope to build on the experience of last year. At the present time, representatives of the Justice Department and representatives of the White House are conferring with some of the key Senators that were involved in the drafting of the legislation last year. We hope to have a bill that can be brought before the Congress in the very near future. We appreciate very much the support that you and this committee have given to the legislation in the past. We would like to work with you

in the future to have reasonable and sensible, nondiscriminatory immigration legislation during this term.

The CHAIRMAN. The first chapter of the Comprehensive Crime Control Act is the Bail Reform Act of 1984 which, among other things, authorizes Federal courts to consider danger to the community in release decisions. Can you give the committee some idea of how the act has operated since last October, particularly in drug trafficking cases?

Attorney General MEESE. Senator, this act has been working very well. We have had somewhere in excess of 400 occasions when it has been used. In about a third of the situations, the detention was ordered on the basis of a likelihood of the risk of flight, about a third because of the danger to the community, and another third which encompassed both aspects, both the danger and the risk of flight. We feel that this has been very valuable tool which is given to judges and to prosecutors, who can now make the requests for this detention. We think it is a very important part of the Comprehensive Criminal Justice Act which is going very well.

The CHAIRMAN. Mr. Meese, this committee has had two hearings on legislation aimed at addressing certain moves by professional sports teams. As a native Californian, I am sure you are aware of the great distress that such relocations can cause all your fans and support of local government. Although we will be receiving testimony from the department on this subject in a future hearing, I am wondering whether you have any preliminary thoughts on the antitrust issues raised in this area?

Attorney General MEESE. Senator, I do not have any thoughts on that legislation at this time. The department is reviewing this legislation and will be prepared to present to you our views in the very near future. The antitrust laws have had particular application to certain types of sports activities. We will be reviewing this legislation and we will be very happy to testify when our review is completed.

The CHAIRMAN. So far the Federal Government has not gone into this field, so if we go into it, it will be a new field and it is a question that has considerable interest.

Now, starting with question 11, from there on, if you will answer those for the record.

Attorney General MEESE. Yes, Mr. Chairman.

[The material referred to follows:]

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 10, 1985

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

On behalf of the Attorney General, I have enclosed the responses to the initial follow-up questions submitted in connection with his testimony on this Department's Fiscal Year 1986 appropriation authorization bill. Responses to the remaining follow-up questions will be provided as soon as possible.

Sincerely,

Phillip D. Brady
~~Acting~~ Assistant Attorney General

Enclosure

QUESTIONS SUBMITTED BY SENATOR THURMOND

(1) Q. One of the goals of the Comprehensive Crime Control Act was to funnel the profits of drug trafficking into a special assets forfeiture fund to be used to finance investigative efforts against narcotics offenders. Unlike the Customs Fund, that fund contained no limits on amounts which could be appropriated for this worthwhile purpose. Why did the Administration choose to impose a $20 million limit on the fund? Has the Department encountered any other problems in implementing the Asset Forfeiture Fund?

A. The language of the Comprehensive Crime Control Act concerning the Assets Forfeiture Fund has caused some confusion. The Administration intended to place a limit on what would be construed as governmental expenditures to be made from the fund. This would allow the payment of nongovernmental expenditures, such as existing liens and mortgages from proceeds of the sale of property to the extent that funds are available for that purpose. Expenditures which are clearly governmental, such as payments of awards, retrofitting of seized vehicles and purchases of evidence would be subject to the appropriations limitation. Originally management expenses were considered to be in the category which would be subject to the appropriations limit. The Administration has reconsidered this issue and is proposing appropriations language which would narrow the categories of expenditures which would be subject to the appropriation limitation. Similar language will be included in the Department's authorization request which will be transmitted to Congress shortly. These categories which will be subject to the appropriation limitation now include only purchases of evidence, payments of awards and expenses of retrofitting seized vehicles placed into service. With respect to management expenses and other costs of the assets forfeiture program, we are proposing that such sums as may be necessary be derived from the fund for these purposes. This would essentially remove the limitation for operating the fund. It is premature to assess whether the Department will encounter any problems in implementing the Asset Forfeiture Fund. The Department still has some time to plan for the implementation of the Fund. At present, we

see no reason why the Fund cannot be established and operated efficiently. An evaluation of the implementation of the act will begin immediately after it becomes operational.

(2) Q. You have recently conducted discussions with your Mexican counterpart with respect to the problem of drug trafficking. Your predecessor, Attorney General William French Smith, met with representatives of the Italian government concerning this issue, prior to his departure. What further plans do you have for initiatives involving these and other foreign governments?

A. We were very gratified by the prompt response that the Attorney General of Mexico made to our invitation to meet. We had a five-hour meeting, in which we explored all aspects of the problem. Other law enforcement officials participating in the meeting included the acting head of the Drug Enforcement Administration, the head of the FBI, the head of our Criminal Division, the Assistant Secretary of State for Narcotics Trafficking and the Acting Deputy Attorney General. We explored how we can do more to support the honest law enforcement agencies and officers in Mexico, how we can do more against the drug trafficking gangs that exist in Mexico, and how we can work together on the eradication program to substantially reduce the cultivation of marijuana and opium. Our feeling is that this was a good first step. We sent Acting DEA Director Lawn and Assistant Attorney General Trott to Mexico on April 16, 1985 to Mexico to continue this effort. Their mission was to explore ways of implementing the decisions that we made at our first meeting to be sure that we are continuing our pressure against the drug trafficking gangs. I also intend to meet again with my counterpart in Mexico within about six months to assess the progress we have made.

I believe that one of the great contributions which Attorney General Smith made was in the area of improved coordination and cooperation of international law enforcement efforts. It is my intention to continue vigorously to pursue improved law enforcement relationships with other governments. At this time,

the discussions with authorities of the Government of Mexico are the only ones where specific arrangements have been made for me to meet with my counterpart. Other officials of the Department are involved in ongoing discussions with a number of foreign governments, however.

(3) Q. Chief Justice Burger and I share a common interest in prison industries programs. I have two questions in this area. First, the Comprehensive Crime Control Act increased the number of authorized prison industries projects from 7 to 20. Could you describe the progress that has been made in setting up additional projects?
Second, keeping in mind our fiscal problems and the appropriate role of the Federal Government with respect to the States, what more can we do to make our prisons "factories with fences?"

A. We have recently been engaged in a major revision of the guidelines governing implementation of the prison industries program and published the new guidelines in the Federal Register on March 29, 1985. Moreover, the Department's new state and local assistance program authorized by the Justice Assistance Act of 1984 includes among the activities eligible for block grant funding the development of prison industry projects. We anticipate that these two recent developments will stimulate significant interest among the states in seeking certification under the Prison Industry Enhancement Program. In addition, technical assistance is currently available from a highly qualified contractor to advise state corrections officials regarding the establishment of a prison industry program.

The expansion of the Prison Industries Enhancement Program to 20 projects will permit further experimentation with a broader market that may benefit state prison industries. In response to the Chief Justice's initiatives on prison industries, a national task force of prominent leaders in both the private and public sectors is working on recommendations for action which are designed to give greater visibility to the issues in this important area. As an outgrowth of the national task force, a National Center for Innovation in Corrections has been established at

George Washington University. The Center will develop a comprehensive approach to prison industry which will include preparation of inmates for prison work programs and post-release employment. Federal Prison Industries has representatives on the working committees of the task force and has made its staff available to the states for assistance.

Because the certification process under the Prison Industry Enhancement Program does not require the expenditure of significant amounts of federal funds, we do not expect current fiscal restraints to have any effect on further implementation of the program. On the contrary, because of the events mentioned above and the emphasis and attention stimulated by the Chief Justice, we expect continuing and increased interest by the States in the development of "factories with fences."

(4) Q. Recently there has been considerable attention devoted by the media to so-called "hostile takeovers" and "greenmail" cases. In May, pursuant to my earlier announcement, the Committee will hold hearings on this issue. Although we will receive testimony from the Department at that time, perhaps you could give us some idea today of your general views in this area.

A. I am aware of no evidence as of yet that hostile takeovers are harming economic performance. Takeover activity -- including the threat of hostile takeovers -- allows assets to be put to their best use, and gives incumbent managers a strong incentive to behave efficiently. Indeed, there is some evidence that hostile takeover attempts tend to maximize the long term share values of affected companies, to the benefit of shareholders. New regulatory or statutory impediments to hostile takeover activity could lower management's incentive to behave efficiently and prevent assets from being shifted to their highest valued uses. Accordingly, far from benefiting the American economy, new takeover restrictions actually could prove detrimental to American corporate performance.

This is not to suggest that every takeover attempt would prove to be beneficial. Some individual takeovers may not yield the positive results that were hoped for. Mistakes in judgment will, however, be cured by market forces, as is demonstrated by the fact that a great deal of merger activity involves the divestment of assets. In sum, we have seen no evidence to indicate that increased government interference in the market for corporate takeovers would prove to be anything other than economically harmful.

"Greenmail" occurs when a company buys back its stock from a large shareholder at a price greater than that at which the stock trades on the market. Some studies conclude that stockholders as a whole reap substantial benefits from greenmail. Because greenmail can act as a signal that a corporation is vulnerable to takeover attempts, the investment leading to the greenmail may stimulate beneficial corporate changes, such as managerial improvements. Furthermore, the prospect of profitable stock repurchases (greenmail) may increase the volume of beneficial takeover activity and thereby yield overall benefits to the American economy. In sum, although there may be situations in which greenmail proves abusive, existing evidence suggests that this practice frequently is beneficial. Accordingly, we do not believe that new federal regulatory impediments to greenmail are called for at this time.

(5) Q. The Comprehensive Crime Control Act reauthorized a variety of Federal law enforcement assistance programs, including the Office of Juvenile Justice and Delinquency Prevention. While certain programs dealing with juvenile offenders may be funded by the States at their election under the Justice Assistance Act, those funds would not be subject to the conditions contained in the Juvenile Justice Act. Why did the Administration recommend terminating funding for this program -- a decision which essentially halves the FY 1985 funding levels for Federal law enforcement assistance?

A. After examining many programs, it was believed that since the original two major thrusts of the Juvenile Justice program, deinstitutionalization of status offenders and separation of adults and juveniles, have been largely achieved that other

important Juvenile Justice activities could be undertaken within the framework of the newly-authorized Justice Assistance program authority.

(6) Q. We were all recently saddened by the tragic death of a DEA agent in Mexico. Are efforts being increased to protect our agents in other countries? What other agencies within the Department have employees stationed overseas?

A. Efforts to increase the protection of our DEA agents overseas include intensified programs of increased awareness, increasing foreign staffing to allow a "partner system" in order that an agent will not have to travel alone and increased terrorism training for new agents to be transferred overseas.

Other agencies within the Department with employees stationed overseas include the Federal Bureau of Investigation and the Immigration and Naturalization Service. The U.S. Marshals Service has one individual on detail to INTERPOL in France. The Civil Division also has one individual located in Munich, Germany.

(7) Q. As you know, the clock is ticking on the Sentencing Commission. We have been informally advised that the Administration is aiming toward sending nominations to the Congress by the end of this month. Is this still the timetable?

A. The selection process is nearing completion and we anticipate that nominations will be sent to the Senate in the near future. In addition, it should be noted that the recent enactment of H.R. 1847, containing technical modifications to the Sentencing Reform Act, (P.L. 99-22) will facilitate the process of setting up the Commission by authorizing the appointment of senior as well as active judges to the Commission. H.R. 1847 also authorizes the Administrative Office of United States Courts, pending confirmation of Sentencing Commissioners, to request start-up funding for the Commission. A more detailed discussion of the implementation of the Sentencing Reform Act is set forth in the attached statement of Deputy Associate Attorney General Jay B. Stephens (see appendix 1).

(8) Q. Last year at the request of the Administration, I introduced legislation relating to awards of attorneys' fees in certain Federal cases. One element of that bill, an increase of fees awarded to attorneys for indigent defendants under the Criminal Justice Act, was included in the Comprehensive Crime Control Act. What plans does the Administration have for such proposed legislation in the 99th Congress?

A. The bill recommended by the Department of Justice last year, S. 2802, was the result of a long study by the Department and other agencies concerning the problems that have become increasingly apparent in recent years under the various fee-shifting statutes passed by Congress. This proposal, known as the "Legal Fees Equity Act," would establish standards and procedures for the award of attorneys' fees against the United States, and against state and local governments, in cases where federal statutes allow such awards.

Congress has passed well over 100 such statutes authorizing an award of attorneys' fees, and many of them apply to suits against the government -- whether federal, state, or local -- where the cost of the award is borne by the taxpayers. Though these statutes run counter to the American Rule that each party pay its own attorneys' fees, Congress has created these exceptions in response to a variety of concerns. One thing that Congress surely did not intend, however, was that these statutes should be used to bestow "windfalls" upon attorneys who file suits.

The Department has concluded that, unfortunately, these statutes all too often have led to windfalls for attorneys and to a needless waste of judicial resources in determining the amount of fee awards. In some cases, courts are awarding excessive hourly rates, or are increasing fee awards through the use of bonuses or multipliers. At the same time, many courts are finding that the attorneys' fee disputes many times can overshadow the case on the merits, wasting the resources of both the court and the litigants. The concerns we have over the course of attorneys' fee litigation have not abated since the Department proposed

its bill; the need for legislation establishing appropriate guidelines and procedures for fee awards is even more acute. We are pleased that Congress was able last year to pass part of our proposal to raise the rates for cases under the Criminal Justice Act, but we think that only strengthens the case for enacting the balance of this comprehensive reform.

Since the hearings on the bill last September, the Department has been reviewing the bill to determine if any changes or improvements would be advisable. We anticipate that the necessary review and clearance process will soon be completed and that this bill will be recommended again to Congress in the near future.

(9) Q. In the 98th Congress, the Senate passed legislation addres ing some of the problems that have arisen under the Freedo of Information Act, particularly as they affect intelligen and law enforcement agencies. What is your view of the ne for reform in this area to achieve an appropriate balance with legitimate public access to government information?

A. In my mind, there is no doubt that certain aspects of t present Freedom of Information Act need legislative attention. The 1974 amendments to the Act were approved at a t of great public controversy and skepticism of the operatio of the government, and accordingly, they tilted strongly toward public disclosure of information held by the government. But, as I think we are learning in this context as well as others, public disclosure is not always the right answer in every circumstance.

There are other interests, quite legitimate interests, a stake which should be considered. Public disclosure can le to violations of individual privacy, or to the disclosure o valuable commercial data. In the context of law enforcemen it is self-evident that in many circumstances public disclosure of the government's investigatory records to the targets of those investigations could jeopardize or defeat law enforcement efforts. Congress must take these competin concerns into account and make sure that the appropriate balance has been struck. Congress must also consider how

the inevitable burdens on the agencies themselves can be minimized.

I think that the bill passed by the Senate last year was an admirable attempt to address those concerns. The bill took into account specific problem areas, such as the extremely sensitive nature of organized crime records, and crafted special protections for those records. Several other existing exemptions would be refined to achieve a better balance. And the bill would address the procedural shortcomings of the present law with respect to the collection of fees and to time limits.

Probably no compromise bill can be seen as fully meeting the needs of any one group, and indeed the Senate's bill would not respond to all of the problems that government agencies have experienced. Other groups, such as some media spokesmen, also have voiced concern over this bill from their perspective. Despite these differences, we regard S. 774 as a useful step forward. We are still hopeful that a constructive solution can be found to address the very real problems that agencies have experienced in trying to provide for public disclosure under the law while still preserving the many other legitimate interests at stake.

(10) Q. In 1982, Congress enacted legislation, which I had introduced, aimed at the problem of record piracy. My office receives frequent inquiries about the Department's perceived lack of activity with respect to this problem and certain restrictive prosecutorial guidelines. Please describe the Department's recent efforts in this area and advise us where record piracy stands among Departmental priorities.

A. The Department of Justice is sensitive to the problems created by record and tape piracy and, given our limited resources, is taking all appropriate action to curb this illegal trade. Indeed, recently the Department successfully concluded a major prosecution in this field. In August of 1984 George Washington Cooper, III, a major distributor of counterfeit audio tapes, was convicted in federal district court in South Carolina on twelve counts of an indictment

charging him with conspiracy and criminal copyright infringement. Cooper has been sentenced to twelve years imprisonment and a $25,000 fine for his role in this scheme. We believe that this sentence equals the most severe penalty ever imposed in a criminal copyright case. Moreover, two of Cooper's distributors have been separately convicted in federal district court in North Carolina for their participation in this illegal operation. The Department's commitment to vigorous enforcement of the copyright law is reflected by the Criminal Division's active involvement in all of these prosecutions. Indeed, a Criminal Division attorney was specially assigned to try Mr. Cooper. We, of course, intend to continue with these efforts. Consistent with this commitment, it is the policy of the Department that "[a]ll meritorious [copyright] cases should receive the careful attention of the United States Attorney." United States Attorneys' Manual, § 9-71.400

Our prosecutive policy in this area was recently the subject of some confusion. Representatives of the motion picture and recording industries expressed concern that the United States Attorneys' Manual might be construed to permit declination of worthy criminal copyright infringement cases in favor of civil remedies. We are currently in the process of revising the Manual to address this concern and ensure that it more accurately reflects our intent to aggressively pursue all meritorious cases. Moreover, Assistant Attorney General Stephen Trott and his Deputy, Victoria Toensing, recently met with representatives of the motion picture and recording industries to reaffirm our commitment in this area, discuss Department policy and clarify any misunderstanding.

QUESTIONS SUBMITTED BY SENATOR MATHIAS

Sentencing Commission

Q. The Department's budget request contains no funds for the start-up of the U.S. Sentencing Commission; nor have the names of any nominees to the Commission been submitted to the Senate.

Could you bring the Committee up to date on the status of formation of the Commission? How much funding do you anticipate will be needed to get the Commission started? How much do you expect it to cost on an annual basis?

A. The Administrative Office of United States Courts estimates the start-up cost for the Commission at $2.35 million. The Congressional Budget Office estimates that the Commission will cost $8 million for each of FY 1986 and FY 1987.

For details concerning the status of the formation of the Commission, please refer to the response to question no. 7 submitted by Senator Thurmond.

Q. How was the figure for anticipated prison population increase arrived at? How much of that increase is attributable to the 1984 crime bill?

Will you provide the Committee with information about how good the Department's track record has been in its past predictions about prison population?

A. The Bureau of Prisons utilizes several statistical methodologies for projecting prison population. The estimates provided to Congress in the 1984 and 1985 budgets were approximately seven percent lower than the actual population levels reached. Considering the substantial cost of prison construction, these population projections are intentionally conservative in order to insure that unneeded prison capacity is not created.

The inmate population projections in the 1986 budget do not contain any substantial increase attributed to the Comprehensive Crime Control Act of 1984. It would be premature to make projections prior to the new Sentencing Guidelines Commission submitting its recommended guidelines to the Congress in April, 1986.

In summary, we are confident that the inmate population increases projected in the 1986 budget represent the absolute minimum level of increase which will occur.

QUESTIONS SUBMITTED BY SENATOR DENTON

(1) Q. Please detail the aspects of the Comprehensive Crime Control Act of 1984 which will require positions and $70 million in 1986?

A. The data responding to this question are attached as appendix 2.

(2) Q. Did the Department project the $22.5 million costs for the 398 Assistant U.S. Attorney positions and 59 Deputy Marshal positions for the newly authorized 85 federal judgeships? Will the Assistant Prosecutor positions add to or reduce the backlog of cases in the federal courts? Would these additional positions have been necessary without the additional authorized judgeships? Will the U.S. Attorney and Marshals Service positions be filled as new judges are nominated and confirmed or all at once?

A. Yes, the Department of Justice did project the costs for the Assistant U.S. Attorney and Deputy Marshal positions.

The work of U.S. Attorneys and their staffs is influenced significantly by a number of factors, some of which are outside the control of the Department of Justice. For example, the volume of criminal cases is directly affected by the number of crimes committed. Also, the Department has no control over the number of judges and the number of locations where court is held. More judges increase the overall capacity of the judicial system; and because more judges can hear more cases, our workload is increased.

This is particularly true in the criminal area. Over the last few years, the shortage of judges has led to delays in bringing complex white collar crime and major narcotics cases to trial. Excludable time from the Speedy Trial Act was being found because of court calendar problems. With more judges presiding over more cases, Assistant U.S. Attorneys' actual court time will increase, we will have to respond to more judges and for this, we will need a larger attorney staff. Furthermore, passage of new criminal statutes will of necessity create a need for additional attorneys to prosecute new federal violations.

In the area of civil litigation, the Department of Justice spends the majority of its time handling defensive litiga-

tion. However, the Department has no control over the number of suits filed against the government. Legislative and judicial actions which increase access to the courts also directly affect the volume of cases handled in United States Attorneys' offices. More judges yield more civil trials where the U.S. Government is the defendant, and will permit more cases to come to trial more rapidly. Without additional attorneys to defend the government, substantial civil court losses may have grave impact on dollars expended in civil settlements. Additionally, the increase in judges and attorneys may give the Department greater ability to initiate more civil enforcement actions.

Assistant U.S. Attorney and support staff positions will be filled as new judges are nominated and confirmed. Each district receiving a district court judge will also receive an increased allocation. At a minimum, one Assistant U.S. Attorney and one direct support position will be allocated. However, we will also consider in our allocation other relevant variables, such as the new judges' location relative to our staffed offices and the current proportional staffing of the districts. Also, support positions will be allocated on the basis of these other variables.

(3) Q. What will be the function of the National Center for the Analysis of Violent Crime and how does its function differ from what is currently being done by the Bureau of Justice Statistics?

A. The National Center for the Analysis of Violent Crime (NCAVC) has been designed to consolidate research, training and operational support functions for the purpose of providing expertise to law enforcement agencies confronted with unusual, vicious or serial violent crimes. The Center is comprised of four major program areas: a research and development program, a training program, a profiling and consultation program and a violent criminal apprehension program.

The NCAVC's Research and Development Program studies violent criminals, their victims, and crime scenes from the law enforcement perspective in order to gain insight into their personalities, to understand the motivations for their behavior, and to examine how they have been able to evade law enforcement efforts to identify, locate, apprehend, prosecute, and incarcerate them.

The NCAVC's Training Program acquaints the criminal justice community with the resources of the NCAVC. It provides innovative and up-to-date training for Federal, state, and local law enforcement agencies, selected behavioral scientists, and others who must deal with violent crime matters.

The NCAVC Profiling and Consultation Program provides to the criminal justice system, the consultation and opinion of experienced criminal personality profiling investigators and behavioral scientists. It conducts careful and detailed analysis of violent crimes on a case-by-case basis in order to construct profiles of the unknown offenders so that the scope of the investigation can be narrowed to focus more readily on the most likely suspects.

The NCAVC's Violent Criminal Apprehension Program (VICAP) provides a national clearinghouse for unsolved violent crimes. It identifies and charts patterns of violent crimes across the United States, using a sophisticated data processing and analytical system. A staff of VICAP crime analysts and investigative case specialists review unsolved violent crimes such as homicides, rapes, child molestations, and arsons submitted on VICAP report forms by law enforcement agencies and identify cases where additional NCAVC analysis and consultation may assist the investigation.

The functions of these programs at the NCAVC differ markedly from those of the Bureau of Justice Statistics. While BJS maintains a national-level statistical series on the incidence and trends of victimization and criminal justice processing, the NCAVC studies the characteristics

of particular violent crimes and becomes involved in the actual investigation of these offenses. Where BJS collects and analyzes data on crime in general and after the fact, the NCAVC is designed to provide a unique capability for assisting investigations in progress.

The National Center for the Analysis of Violent Crime was established at the FBI Academy in Quantico, Virginia with financial support from the Office of Justice Programs and the National Institute of Justice. The FBI will assume the total cost of operating the NCAVC in FY 1986.

(4) Q. Please detail the deficit reduction rescission in the Office of Justice Programs? Is the reduction rescission from Juvenile Justice? How does the reduction rescission fit section 2901 of the Deficit Reduction Act?

A. The deficit reduction rescission shown in the Office of Justice Programs is larger than would have been expected because there was a large carryover of unobligated administrative funds from 1984. This carryover was due to the fact that very limited hiring for the State and Local Assistance Program was done in FY 1984. Although funds were appropriated for the program, they could not be used until an authorization bill was passed which did not take place until FY 1985, resulting in an excess of funds in the administrative account. The rescission of $2,031,000 has eliminated that problem. These funds are not from Juvenile Justice. The object class breakdown of this amount of $2,031,000 is: travel $12,000, printing $230,000, and consultation services $1,789,000.

(5) Q. Why does the Department's recommended statutory language refer to the Juvenile Justice, Runaway Youth and Missing Children Act Amendments of 1984 and Missing Children Assistance Act? Should not the reference be to the Juvenile Justice and Delinquency Prevention Act of which these other Acts are a part?

A. Yes. The Department's reference should be to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

(6) Q. Why does the Department propose to merge Juvenile Justice, Justice, Criminal Justice Assistance, Justice Research and Justice Statistics into a single budget line item? Does this affect administrative discretion to transfer funding from one program to others?

A. The Department does not propose to merge the four budget activities mentioned. Juvenile Justice; State and Local Assistance; Research, Evaluation and Demonstration Programs; and Criminal Justice Statistical Programs, are independent budget activities and would remain so. We proposed to combine the currently separate State and Local Formula and State and Local Discretionary activities into one: State and Local Assistance. The Summary of Resources by program justifications will continue to show the amounts for the sub-activities. The Juvenile Justice Activity has been treated in this manner for three years.

(7a) Q. Did the Administration support reauthorization of the Juvenile Justice and Delinquency Prevention Act when it was included in the Comprehensive Crime Control Act which passed as part of the Continuing Resolution?

A. The Administration supported the Comprehensive Crime Control Act as a part of the Continuing Resolution. The JJDP Act was one of the 23 Chapters of the Comprehensive bill.

(7b) Q. Please detail the accomplishments in the areas of Jail Removal as mandated by the JJDPA?

A. Based upon 1983 monitoring data, of the 47 states reporting, 15 states report no youth held in jails; 18 report a reduction in number of youth held in adult jails.

Section 223(a)(14) of the JJDPA requires that beginning after the five-year period following December 8, 1980, no juveniles be held in any jail or lock-up for adults. Thus, states are required to be in compliance by December 9, 1985. A determination of compliance will be made based upon data submitted by states in their December 30, 1986, Monitoring Report.

(7c) Q. Please detail the accomplishments in the areas of delinquency prevention and family involvement as mandated by the reauthorized JJDPA.

A. The Juvenile Justice, Runaway Youth and Missing Children's Act Amendments of 1984 (Public Law 98-473) which was enacted on October 12, 1984. Section 225 requires that a procedure for competitive grant award be established in consultation with the Directors of the National Science Foundation and the National Institute of Mental Heath. The procedures are currently being developed. The new law cannot be implemented until this task has been completed.

Ongoing activities under the current administration begun prior to the new Act have involved a number of initiatives which are designed to prevent delinquency, foster family involvement and/or strengthen families. We would expect these types of activities to be continued under the Justice Assistance programs or the Missing Children's Assistance Act:

- Violent Juvenile Offenders - Under this program model family involvement was structured into the development of the youth's treatment plan. Families were involved in counseling and therapy and in the planning for actual reintegration of youth back into their communities.

- Violent Juvenile Offenders - This effort focuses on the organization of communities to combat violent juvenile crime. Neighborhood-based agencies were funded to develop an analysis of violent crime problems, and create a Community Committee, to develop an action plan to combat violent juvenile crime. A component of this model calls for work with families of youth-at-risk or youth engaging in juvenile crime by marshalling community resources to assist these families.

- National Center for Missing and Exploited Children (NCMEC) - In the first nine months of operation, the National Center for Missing and Exploited Children has responded to thousands of requests from around the United States for a wide variety of assistance. During this period the National Center has participated in the delivery of services and assistance to individuals and organizations concerned with the issues of missing or exploited children. Among the accomplishments of the Center during its first nine months of operation are:

- The establishment of a national toll-free hotline to be primarily used by individuals who have information regarding the location of a missing child. In the first three months of operation, this hotline have received over 7,000 calls including almost 500 reports by individuals who believe they had specific information regarding the location of a missing child. In addition, this toll-free hotline is used to identify a number of children involved in a nationwide abduction and exploitation case.

- Training programs for law enforcement and social services professionals in the investigation and prosecution of cases of child victimization. Training programs have been conducted in over 20 states for over 5,000 individual criminal justice professionals.

- Training assistance and advice concerning the effective treatment of hundreds of cases of missing or exploited children. This includes direct liaison and advice to law enforcement agencies and families and public and private organizations.

- A nationwide state legislative effort conducted to distribute information regarding the most effective state laws to protect children. The Center has established a national resource center which has assisted dozens of states in the drafting and enactment of laws to protect children.

- An education and public awareness campaign that has brought Center personnel to speak in at least 25 states at regional and statewide citizen conferences.

- The development and distribution of manuals and written instructions concerning effective laws to protect children and the prevention and treatment of parental kidnapping cases. Thousands of these publications have been distributed and the program has involved every state in the union.

- Project Helping Hand - This diversion project addresses reducing adjudication of juveniles, increasing community involvement, and otherwise meeting the needs of troubled youth. It is also felt that this will free the juvenile justice system to concentrate on more serious crimes. A major aim is to establish diversion programs supported by local communities with both services and funding.

- Research following-up studies of Delinquency in a Birth Cohort - This is intended to determine the continuity of criminality between chronic juvenile offenders and career criminals. The product of this research may lead to the design of programs to deter juvenile offenders from becoming career criminals.

- Permanent Families for Abused and Neglected Children (Court-Appointed Special Advocates Program) - This project provides training and technical assistance to state officials in assisting them to establish a program for volunteers to represent the interests of abused and neglected children in juvenile and family courts. It is proving effect as a long-range means of preventing delinquency.

- Juvenile and Family Court Training - Provides, through the National Council of Juvenile and Family Court Judges, training for judges and court-related personnel.

(8) Q. Please detail the management and administrative savings to be achieved in FY86 from the termination of JJDP funding?

A. The 1986 budget contains a reduction of 22 positions, 16 workyears, and $568,000 as a result of the projected termination of the Juvenile Justice Program. Juvenile Justice Program awards have a life of three years, the year of award plus two. Therefore, it will take three years to phase out the OJJDP and provide for a transition of appropriate program activities to the Bureau of Justice Assistance and research/demonstration responsibilities to the National Institute of Justice. Accordingly, a reduction of 1/3 of the OJJDP staff is proposed for each of three years.

(9) Q. What portion of the cut in JJDP funds would have gone to the states and localities as justice block grant funding?

A. Section 223(d) of the JJDP Act requires that funds made available but not obligated under the non-participating state procedure, coupled with other unobligated and available formula grant funds (i.e., funds that have been de-obligated and reverted to OJJDP) shall be made available on an equitable basis to those states that are in full compliance with the deinstitutionalization and separation requirements. Section 228(e) provides that any Special Emphasis funds that have been de-obligated and reverted to OJJDP shall be available for reallocation in an equitable manner to states which have complied with the requirements in Sections 223(a)(12) and (13) of the Act.

As of February 22, 1985, 34 states were found in full compliance with both Sections 223(a)(12) and 223(a)(13) of the Act.

(10) Q. What are the functions and responsibilities of the National Institute for Juvenile Justice and Delinquency Prevention and what funding has been requested for NIJJDP?

A. The National Institute of Juvenile Justice and Delinquency Prevention was established to provide: a coordinating center for the collection, preparation, and dissemination of useful data regarding the prevention, treatment, and control of juvenile delinquency; and appppropriate training (including training designed to strengthen and maintain the family unit) for representatives of Federal, State, local law enforcement officers, teachers and special education personnel, family counselors, child welfare workers, juvenile judges and judicial personnel, probation personnel, correctional personnel (including volunteer lay personnel), persons associated with law-related education, youth workers, and representatives of private agencies and organizations with specific experience in the prevention, treatment, and control of juvenile delinquency. The amount of $7,726,000 was allocated for this program in FY 1985.

QUESTIONS SUBMITTED BY SENATOR BIDEN

Executive Order

Q. Have you given any thought about the need for an executive order for the Drug Enforcement Policy Board, if for no other reason than to amend Executive Order 12368 which sought to coordinate drug policy through the Drug Abuse Policy Office in the White House?

A. I think that it would be important for us to organize the National Drug Enforcement Policy Board prior to considering any executive order changes. In that regard, we intend to hold the first meeting of the Policy Board on April 24, 1985. I believe it would be proper to discuss the need for any amending executive order with the approriate cabinet-level officials and others who would be touched by such a change. If an executive order is needed, it will, of course, be considered.

Q. In drafting the intelligence executive order, a tradition has developed whereby the members of the Intelligence Community work with the Executive Branch in the formulation of the order. If there is to be such an order for narcotics control policy, would you be willing to engage in a similar process with the members of the Committee?

A. I believe that the drafting of an executive order is properly the responsibility of the Executive, in this case, the President. I have, however, no reservations about discussing this Committee's ideas in that process, if an executive order is indeed needed. I believe it is extremely important for Congress to be adequately and properly advised as to the Administration's drug enforcement effort. Indeed, the National Narcotics Act of 1984 makes the Attorney General the principal advisor to Congress on this question. It will be necessary to conduct a sensitive dialogue between Congress and myself on these very important issues.

Biden/Hawkins Foreign Aid Provision

Q. How do you feel about cutting off aid to a source producing country?

A. I think that it is an option that should be seriously con-

sidered when we are urging a major source country to establish a more effective narcotic central program. It is an option which we must use very carefully to make sure it will produce the results we are looking for. In some instances, such action may prove to be counterproductive, but in other cases it might work.

Q. Specifically, how do you feel about cutting off aid to Bolivia?

A. Our present analysis is that cutting off aid to Bolivia would not produce the results we are looking for. Recent drug enforcement efforts of the Bolivians lead us to believe that future efforts will be more effective. We continue to closely monitor the situation.

Q. This should be something considered each year by the National Drug Enforcement Policy Board. I would be interested in specific recommendations of the Board, in addition to the State Department report. Do you have any problem with that?

A. Yes. The International Narcotic Central Strategy Report is the product of cooperative efforts of the State Department with the Drug Enforcement Administration of the Department of Justice as well as with input from other agencies. I believe that the report and its recommendations are already the result of a well coordinated effort of the concerned agencies and that any further comment of the Board would prove redundant.

National Narcotics Border Interdiction System

Q. With respect to the National Narcotics Interdiction Border System (NNBIS) headed by the Vice President, do you believe it has produced the level of success that was originally expected?

Is there any reason why we can't merge the interdiction task force headed by the Vice President into the new Drug Enforcement Policy Board and put it under your direction as Chairman of the Board? Won't that make more sense and improve coordination?

A. The concept of a national system to deal with border interdiction has merit and its potential should be explored

and utilized to the fullest extent. The NNBIS system has not produced the originally expected levels of operational success. The system can be made more effective by merging the interdiction functions of NNBIS within the existing framework of law enforcement agencies charged with this function. Additionally, the Vice President's office will continue to play an important role through the National Drug Enforcement Policy Board chaired by the Attorney General. The coordination of this vital function will improve and will take into account each agency's mandate and the law governing this area. Fragmentation of strategic and tactical intelligence will be minimized through the use of the facilities at the DEA El Paso Intelligence Center (EPIC). EPIC has the capability and experience as well as in-house representation and command from Customs, Coast Guard, INS, FBI, USMS, ATF, and IRS. Originally, EPIC was designed to become a national interdiction intelligence center and that role should be enhanced and not fragmented.

In addition, EPIC has the capability to create and expand crucial interdiction intelligence programs to meet changing trends in the drug traffic. EPIC can realistically, and should be located where coordination and action decisions can be based on data and input from foreign, Federal, State, and local enforcement communities. Additionally, with DOD representation to supply information on their schedules and ability to assist in planning interdiction programs, no adverse impact will result on our defense readiness programs. The components of the existing NNBIS staff will assist in maintaining and planning interdiction operations. The Federal interdiction effort can work and be a very valuable asset in countering the drug problem facing this country. Coordination of all United States resources is more than essential. The Vice President has served and should continue to play a vital role through the Attorney General to insure cooperation and true coordination between agencies. The success of such a program will be as signifi-

cant and rewarding as those whose experience and expertise lend itself to a true understanding of all facets of the problem.

Overall Department Budget Questions

Q. Now that you are the Attorney General and have had a chance to review the 1986 Fiscal Year Justice Department budget proposal, let me ask you what you propose to do in the fight against crime and drugs?

A. As I said in my opening remarks, I have followed the programs and activities of the Department closely over the past four years and I fully support the initiatives that the President has proposed for the Justice Department for 1986.

In the past four years we have devoted more resources to the fight against drugs than ever before in history. We have a greater allocation of resources from various Federal, State and local agencies and better coordination of these resources than we have ever had in the past. The Organized Crime Drug Enforcement Task Forces are prime examples of these activities. I intend to use the new Drug Enforcement Policy Board to build on these recent enforcement initiatives to expand our efforts in fighting organized crime and drug trafficking. It is premature to offer specific proposals at this time but I can assure you that a coordinated national strategy will be the underlying theme of future enforcement activities.

Q. Are there programs or cuts in this budget request, that I acknowledge was not prepared under your direction, that you do not totally agree with or would like to see changed or augmented?

A. No, as I said, I have followed the activities of the Department closely for the past four years and I fully support the budget request which is before you.

Q. Do you intend to reorganize, eliminate or beef-up specific bureaus or agencies to accomplish your objectives in the future. If so, please tell us some of your ideas.

A. As you know, I have announced the nominations of D. Lowell

Jensen to be Deputy Attorney General and William Bradford Reynolds to be Associate Attorney General. I believe it would be a good idea to realign some of the functions of the Department in accordance with the expertise of these two gentlemen when they are confirmed by the Senate. When these plans are developed we will send the proposals to the Committee for review. I do not have additional plans to reorganize the Department at this time.

Q. Does the President's FY '86 budget reflect sufficient increases for law enforcement agencies to truly carry out a war on drugs?

A. The President's FY 1986 budget provides a responsible approach to conduct a controlled war against drug traffickers. It focuses on a coordinated drug enforcement strategy in which the most benefit is derived from the Federal, State and local investment in enforcement activities. We are encouraged by our recent success in developing cases which effectively cripple the criminal organizations by removing the higher eschelons of these enterprises and removing the finances upon which these organizations rely. Also we are encouraged by the cooperation we are receiving from many foreign governments. Much of the credit in this area should be given to former Attorney General William French Smith who personally conveyed to the officials of many countries the importance of coordinated international efforts which are necessary in order to truly combat this worldwide problem. We are doing more than ever to stop the flow of drugs in this country. We also reassess our programs on a regular basis. In short, I believe the President's budget reflects sufficient increases for law enforcement agencies to adequately continue the war against narcotics traffickers.

Q. Assuming the consensus in the White House and the Congress is to freeze the overall federal budget for FY '86 at Fy '85 levels, are you willing to go to the President and make the case that additional narcotics control resources should come from the Pentagon budget?

A. I do not believe that it is fair to take resources from another agency with a mission which is vital to our national security. The nation's defense against foreign aggression is a top priority of this Administration. Domestic crime prevention is also a security interest and one of the prime functions of government. Similarly, insuring the protection of all Americans from the menace of criminal organizations continues to be another top priority of this Administration. One cannot be accomplished at the expense of the other and I would not make such a proposal.

Forfeiture

Q. I see money spent on forfeiture as a good investment. Not only can we put drug traffickers out of business, but the federal government can actually profit from it -- we forfeit their assets, sell them, and put the proceeds in the asset forfeiture fund, which is then used to pay expenses in forfeiting the next guy's assets. Do you agree that money spent on forfeiture is an investment in this way?

A. We believe that forfeiture is one of the most powerful weapons that can be employed to break up drug trafficking syndicates. In some instances, it is even more important than incarcerating top-level traffickers as other persons tend to take over the role of the persons convicted and imprisoned while we can, by seizing and forfeiting the assets and proceeds of drug syndicates, often destroy them entirely. It is because of our belief in the importance of forfeiture reforms that the President included such reforms in his Comprehensive Crime Control Act submitted to the Congress on March 16, 1983 and that we devoted so much effort to urging enactment of these reforms last year. The fact that forfeited property financially benefits the Government makes forfeiture actions a remarkably good investment of resources.

Q. Why is there a cap on this program?

A. The language of the Comprehensive Control Act has caused some confusion. The proposed cap on expenditures from the Forfeiture Fund reflects the provision in the authorizing legislation making funds available "in such amounts as may be

specified in appropriations acts" for the purposes specified in the Crime Control Act. The cap was intended to provide control over spending by federal agencies and still meet the intent of the legislation. We have been involved in subsequent discussions with OMB and Congressional staff and we will be proposing amended appropriations language for the fund which should resolve the current problems concerning the cap on this program.

Q. Looking at it from that perspective, does it make sense to limit expenses at $20 million?

A. Congressional staff have expressed this concern to both OMB and the Department. As a result, an agreement has been reached which would allow the Department to amend the original request and seek a two-part appropriations item. This would specify that "such sums as may be necessary" may be expended from the Fund for sales costs, warehousing, satisfaction of liens and mortgages and payments in mitigation or remission. The only expenditures subject to a dollar ceiling would be those involving payments or rewards, purchase of evidence, and retrofit of forfeited conveyances retained for law enforcement use. This two-part appropriations approach would, we believe, enable the Fund to function as originally contemplated.

Q. Do you agree on the importance of working cl
and local agencies on forfeiture?

A. We must have a close working relationship wit
local law enforcement agencies if we are to h
our fight against drugs. We have devoted gre
improving cooperation and coordination of fed
and local law enforcement efforts though the
Coordinating Committee (LECC) and Organized C
Enforcement Task Force Programs. In the cour
meetings since October, Department officials
new authority to share forfeited property wit

State and local law enforcement agencies and [illegible] been enthusiastically received. In fact, tho[illegible] officials who have appeared before LECC group[illegible] there was more interest in this forfeiture sh[illegible] than in the grant program authorized by the j[illegible] assistance title of the crime package. We ar[illegible] that this enthusiasm will translate into grea[illegible] State and local efforts against drug traffick[illegible].

Q. Don't you believe our claims to State and local agencies that the federal government will help pay their forfeiture expenses is a little disingenuous if the entire fund for all Justice agencies and State and local agencies will be limited to $20 million?

A. At no time has it been suggested that transfers of forfeited property to participating State and local law enforcement agencies should be subject to a dollar ceiling. The only cases where the cap might have posed a problem are those where property seized and forfeited in a drug case is not appropriate for law enforcement use (e.g., real estate, jewelry, or luxury items such as Persian carpets). We have been of the view that the 1984 statute authorized us, in such cases, to sell the property and share the proceeds with participating State and local agencies. In fact, we have proposed to do this in a recent case in Texas (see appendix 3). Doubt has now been cast upon our ability to share "proceeds" of forfeiture actions and, admittedly, the 1984 statute is far from clear on this point. This issue should be resolved by the Congress at an early date.

Forfeiture -- Substitute Assets

Q. Do you support, in principle, putting the concept of "substitution of assets" in the forfeiture laws?

A. We strongly support the concept of being able to forfeit substitute assets and such a provision was included in the Comprehensive Crime Control Act of 1983 as submitted by the President. Where a criminal has placed the assets and

proceeds of his criminal enterprises beyond the reach of the Government, we should be able to reach other property of the defendant up to the value of the criminal assets and proceeds without regard to whether such substitute property was acquired independent of the criminal enterprise.

Q. Are you aware of any complaints from the field offices about the difficulty of getting forfeiture in the absence of a substitute assets provision?

A. A persistent problem in forfeiture cases is tracing the proceeds of criminal activity to specific property. Sophisticated criminals, in particular, routinely seek to "wash" or "launder" criminal proceeds and then invest them in properties or businesses which are often legitimate. By virtue of the "washing" or "laundering" activities, it is always difficult and often impossible to trace property of organized crime figures and drug traffickers back to the criminal enterprise which generated the money with which the property was purchased. The substitute asset proposal would eliminate the need for the time-consuming and often impossible task of tracing funds through a purposely complex maze of transactions devised by sophisticated criminals to frustrate law enforcement efforts.

Q. I think the problem in convincing the House is the lack of hard data. Would you be agreeable to designating someone to perform what I think is the essential task of keeping track of forfeitures that could have happened if there were a substitute assets provision, but which had to be dropped because there isn't one? With that kind of data I think we could work together to convince the House that we need it.

A. We are often asked by the Congress to provide data on the number of cases we have failed to make because of a deficiency in the law. Generally, the answer is that we do not know because we have not been making these cases. The typical prosecutor is a pragmatic and extremely busy individual who seeks to enforce the law as it is rather than devoting time to recording instances where a particular provision of law--or the absence of a particular provision of law--impeded one aspect of an investigation or prosecution.

For this reason, it is difficult to secure data on the number of instances where, but for the absence of a substitute assets provision, we were unable to forfeit specific property. While we would be glad to attempt to gather such case examples, we believe that the need for a substitute assets provision should be self-evident to anyone familiar with how sophisticated criminals operate. Moreover, we find it difficult to understand how anyone can object to forfeiture of substitute assets where we are able to prove that a RICO or drug trafficking enterprise controlled assets or derived proceeds equal to or greater than the value of the substitute asset in question. We understand that House reluctance to endorse the substitute assets concept is based, not upon the lack of need for it, but upon a view that such a provision would be unconstitutional, a legal position which we believe to be without merit.

DEA Foreign Drug Program

Q. Are you aware that the actual workyear figures for the DEA foreign cooperative program which supports DEA agents abroad has actually decreased over the last four fiscal years?

A. From 1982 to 1985, the planned Foreign Cooperative Investigation Program workyears have decreased from 353 to 350. At the same time, the actual agent workyears overseas within the Foreign Cooperative Investigation Program have increased from 155 in 1982 to 180 estimated for 1985.

Q. My Department of Justice budget documents show that in 1980, 330 workyears was devoted to this program. By the end of FY 1983 it was as low as 292 and as of October, 1984 the actual workyears was at 323. Does this mean that during this entire period of the Reagan Administration war on drugs in which claims of major infusions of funds and personnel have been invested, that the actual commitment to working abroad in source producing countries by DEA has been reduced?

A. As can be seen from the above answer, our staff overseas has steadily increased. The decrease in the Foreign Cooperative Investigation Program has been within the domestic portion. The low point which was reached in

FY 1983 was the result of the major reorganization and transfer of functions which resulted in the necessity to freeze hiring. We are continuing our emphasis on staffing our overseas investigative staff.

Q. Do you believe we can expect upward adjustments in the actual workyears devoted to the foreign cooperative program based on the recent murder of Agent Camarena and hostilities in Latin American countries?

A. Yes, we expect increases in the agent workyears, especially in the Latin America area.

Q. What do you see as some of the major weaknesses in the U.S. efforts to control the foreign sources of illicit drugs?

A. Cocaine, marijuana and opium cultivation flourish in impoverished and economically unstable countries. The majority of these countries are unable and/or unwilling to help themselves. Consequently, there is a direct link between the lack of progress in narcotic control efforts and the type and amount of U.S. assistance provided these countries. The elimination of AID's Public Safety Program, which addressed rudimentary training and assistance to law enforcement agencies in these developing countries, was a blow to progressive efforts. Placing these countries under the pressure of compliance to U.S. standards, such as the Hawkins-Gilman Amendment to the Foreign Assistance Act, without having all U.S. agencies agree on its application, sends at best, confusing signals to foreign counterparts. The failure of the U.S. Government to place the appropriate political and economic emphasis on progress directed at curtailing widespread law enforcement corruption through constructive assistance rather than shallow criticism, only perpetuates the problem.

Q. What initiatives will you, as Chairman of the National Drug Enforcement Policy Board, propose that the State Department undertake in order to correct these weaknesses?

A. I would like to encourage Congress to consider lifting

the ban which restricts the type of assistance available to foreign law enforcement agencies. For example, the traffickers have better weapons and equipment than the police. The possibility of supplementing the salaries of key officials involved in the narcotics control efforts, would diminish their susceptibility to corruption. More flexible legislation regarding narcotics control assistance is needed.

I would work to vigorously pursue narcotics control agreements and accords with foreign countries. The State Department should develop a closer coordination with DEA on establishing a narcotics law enforcement link to all foreign narcotic control programs. This would strengthen security and verification efforts abroad, as pointed out in April of last year by the United Nations Fund for Drug Abuse Control (UNFDAC) in Vienna, Austria.

In addition, we need to see that extradition requests continue to be processed expeditiously and their importance emphasized to foreign countries as part of an aggressive international narcotics enforcement policy.

We will engage in vigorous negotiation with key producing and transiting countries, and seek Mutual Legal Assistance Treaties which will allow investigative latitude against financiers of drug trafficking and joint prosecution cases.

Q. What about training? Is this still being done separately? Is there any intention to combine training functions?

A. The DEA Special Agent training is presently conducted at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia. The FBI Special Agent training is conducted at its training academy at Quantico, Virginia. There has been close coordination between the DEA and the FBI in developing cross training programs for its agents. Many DEA agents have received instruction in the jurisdiction of the FBI at Quantico and many FBI agents have received DEA training in conducting controlled substances investigations at Glynco.

There are many reasons to consider combining training, ranging from economics to establishing consistent training curriculums for the two Title 21 agencies. We believe that a merger of the training function would be more efficient and in the long run more economic than to maintain two separate training facilities.

A joint agency study group was assembled in January of 1985 to explore the advisability and feasibility of relocating DEA's Office of Training from Glynco, Georgia, to the FBI Academy, and to advise the administrators of the FBI and DEA as well as the Attorney General on this matter.

Q. Could you explain the current working relationship between the FBI and DEA?

What are your views on complete consolidation of DEA into the FBI?

How would this impact on the U.S. overseas drug enforcement program which, based on my travel abroad, DEA personnel seemed to be well received in many countries?

A. The FBI and DEA enjoy an excellent working relationship. It is characterized by a continuing harmonizing of functions and efforts and an integration of systems that are administrative and supportive in nature. The relationship is an evolutionary process by which both agencies, while maintaining their individual identities, are working in a complementary fashion. This is resulting in a more effective, combined drug enforcement effort. The command structure, with the Administrator of DEA reporting through the Director of the FBI, has continued to show positive results with no loss of momentum in the investigative effort.

Furthermore, narcotics enforcement is augmented not only by the addition of FBI manpower, but also by the Bureau's automated support system. Of significance, too, is the FBI's expertise in complex, long term investigations and that talent has been applied to financial flow investigations as drug traffickers enter into sophisticated organized criminal networks.

This evolutionary process began in January of 1982, when the Attorney General announced that the FBI would have concurrent jurisdiction with DEA for investigating

violations of the Comprehensive Drug Abuse Prevention and Control Act of 1970. He states, " ... in order to insure maximum effectiveness and efficiency in the enforcement of criminal drug laws, the resources of the FBI will be available to complement and supplement those of DEA." Also, the Attorney General directed that the DEA should report through the Director to the Attorney General, in order to develop an overall cooperative strategy between the two agencies, and with instructions to bring the agencies as close together as possible.

The relationship between the DEA and the FBI could be described as "coordinated independence." This reflects the fact that the missions of the two organizations are consonant in the drug areas. The harmony of mission-effort occurs principally in the area of drug-related corruption, drug trafficking by traditional organized crime groups, and motorcycle gangs.

Within these areas, there is close coordination of policy and enforcement strategy. This is accomplished through an assortment of coordinative mechanisms, including frequently scheduled executive meetings between the Director of the FBI and the Administrator of the DEA; the holding of joint SAC (Special Agent in Charge) conferences. Additionally, an exchange of Special Agent personnel between each Headquarters has enhanced through open discussion the coordination of policy understanding and day-to-day enforcement activities.

In 1982, the FBI and DEA developed an implementation directive agreement. It set forth the FBI's and DEA's responsibilities and described individual and combined missions to combat drug trafficking.

Currently, about 1,000 FBI agents are working full time in investigating drug matters, particularly stressing the FBI's expertise in organized crime, financial flow, and public corruption. The Bureau's major effort has been in the investigation of these areas; however, in those geo-

graphical areas where DEA has little or no resources the FBI has also investigated significant domestic drug traffickers, generally in cooperation with State and local police agencies.

There are currently over 800 investigations being investigated jointly by the FBI and DEA, and in this experience, the joint investigative strategy against the major drug trafficking networks in the United States is being developed.

The Director established in 1984 an FBI/DEA Link-Up Committee to address better coordination in the areas of technology, operations, budget formulation, administration and long range planning. Many administrative functions common to both agencies have been, or are in the process of being, consolidated, such as the investigation of applicants, collocation of FBI and DEA personnel in common space, and laboratory functions. These efforts are designed to increase the efficiency and effectiveness of both agencies in an effort to reduce the overall administrative overall administrative overhead expenses of the Department of Justice.

Beside the FBI/DEA Link-Up Committee, the Director has assigned ten FBIHQ Supervisors to DEAHQ to help develop programs in DEA, such as planning and evaluation, internal audits, a stronger legal counsel department, and automation capabilities. The Bureau has also instituted studies to evaluate the feasibility of placing the maintenance of DEA vehicles within the FBI maintenance system, transferring of DEA personnel records to FBI personnel records system, and the collocating of agents in space where applicable. A coordinated approach is being developed for handling the forfeiture of seized property. Additionally, DEA and the FBI are working on establishing a joint career development program, transfer policies, and compatible investigative guidelines. Common training procedures have been developed and the cross training of agents is progressing very well.

The question of consolidation has, of course, been studied in the past. I am open to any course of action which would produce a more effective drug law enforcement effort. I am continuing discussions with both DEA and FBI on their consolidation efforts.

State and Local Assistance

Q. Do you support continued assistance funds for state and local crime fighting programs? Do you think the current level of assistance funds provided state and local agencies for criminal justice is adequate?

A. Yes, I certainly support assistance funds for state and local crime fighting programs. The Office of Justice Programs budget contains $67,000,000 for this purpose. I believe that given the difficult fiscal situation this country is facing, the requested level of funding will be of great help and support for the most pressing problems facing the state and local agencies.

Q. Why is the Department requesting in their supplemental a reprogramming of $17 million out of the multi-state regional information system used to promote joint investigations by neighboring states and also the juvenile justice program, to cover some costs elsewhere in the Department? Both of these programs have continually been supported by Congress and don't you agree that attempts to shut these programs down makes your claims of support to local law enforcement a bit misleading?

A. The Department budget was submitted before I assumed the position of Attorney General. $13,026,000 of the $17 million were carryover funds for juvenile justice. These funds were available for expenditure in 1984 but for a variety of reasons were not obligated. The Department urgently needed funds to hire Assistant U.S. Attorneys and Deputy Marshals to support the 85 new judgeships. In order to reduce the impact of a supplemental appropriation request on the deficit, the Department reviewed all its accounts to see if there were funds available from present or previous appropriations that could be used. The Department believed that since the $13,026,000 of juvenile justice funds were carryover funds, that they could be better used

to support the 85 new judgeships. An additional $4,500,000 is proposed to be transferred from the $9,900,000 appropriated for the Regional Information Sharing System. The Department believes that in view of the federal deficit, and the $50 million which has been awarded to these projects over the past 12 years, that the $4,500,000 would serve a better purpose in providing attorneys and marshals to support the 85 judgeships.

I do not agree that the Department recommendations to terminate funding for juvenile justice and Regional Information Sharing Systems are inconsistent with my support of local law enforcement. We have a range of very significant programs to assist and support local and state law enforcement. All of the 18 purposes listed as eligible areas for block grant expenditures can address juvenile as well as adult crime. Three of the 18 purposes specifically include juvenile justice. I am also a strong supporter of the President's efforts to reduce the federal deficit. When viewed from a total perspective of continued funding in these austere times I have concluded that the federal government can no longer afford to continue funding these programs.

Q. This Administration has been reluctant to provide assistance funds for state and local prison construction. Even after the Attorney General's Task Force on Violent Crime cited the need for additional prison space as its most important recommendation, the Administration refused to provide any funding for prison construction.

As part of the crime package, we passed a provision to provide surplus federal property to states and local government for correctional purposes.

a. Can you tell me the status of this program?

b. Can we expect you to quickly get this program in motion and turn over some of these properties in short order?

c. What other ideas do you have for helping state and local government respond to the problem of limited prison space?

A. a. The Office of Justice Programs (OJP) has developed an

Application Kit which gives all the details on the Federal Surplus Property Transfer Program. OJP will mail this kit to each state agency which has been designated by the Governor to administer the State and Local Assistance Program. OJP has already notified every Governor of the program's existence. OJP will also mail the Application Kit to any other interested unit of government. As of April 8, 1985 two federal properties were in the process of being transferred to local governments.

b. OJP has moved with dispatch to implement this program and routinely alerts state and local governments of surplus federal properties as they become available.

c. One of the approved activities for which block grants can be used is 403(a)(9) which states: providing programs which alleviate prison and jail overcrowding and programs which identify existing state and federal buildings suitable for prison use. We expect many states and localities will use some of their block grant funds for this purpose.

Legislative Affairs

Q. As one who was supportive of the work done by the Legislative Affairs Office, I am wondering how that office would operate under your leadership? Can I expect continued cooperation and assistance as was the case in the 98th Congress?

Can I expect to be meeting on a regular basis with Mr. Jensen?

A. The Office of Legislative and Intergovernmental Affairs (OLIA) will continue to maintain Department liaison with Congress and other government departments and agencies, as well as helping to formulate and coordinate legislative policy among the Department's offices, boards, divisions, and bureaus. In addition, in 1984 OLIA assumed responsibility for liaison between the Department and state and local governments and related interest groups.

We look forward to continued cooperation with the Congress. We value our role in assisting the Congress in the vital oversight and legislative activities which pertain to the Department. In this regard, we will continue to improve and expedite the process of providing the high quality responses to Congressional requests that are needed and expected. Moreover, we want to continue the highly beneficial regular meetings between the Deputy Attorney General and Chairman Thurmond and yourself.

Tort Claims

Q. Have you had a chance to review my bill, S. 492, the Law Enforcement and Investigative Offices Civil Liability Protection Act?

Q. Don't you agree that we owe it to law enforcement agents and their families to resolve this question immediately?

Q. Could you please prepare an analysis of my bill so that we can get underway with an agreement on moving law enforcement tort claims legislation this year?

A. For many years the Department has either submitted or endorsed proposals which would resolve the significant burden imposed on federal employees through law suits against them individually for conduct that was carried out within the scope of their employment. The nature of these law suits, some of which have harassment as their goal, is deleterious to the exercise of responsible decisionmaking and the effective carrying out of government functions. At the same time, the present circumstances preclude the chance of any realistic compensation to deserving claimants.

The Department is reviewing S. 492, the Law Enforcement and Investigative Officers Civil Liability Protection Act. An analysis is being prepared and will be forwarded to the Committee.

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 4, 1985

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

On behalf of the Attorney General, I have enclosed the responses to the additional follow-up questions submitted in connection with his testimony on this Department's Fisal Year 1986 appropriations authorization bill. We regret the delay in providing these additional responses.

Sincerely,

Phillip D. Brady
Acting Assistant Attorney General

By:

Charles E. Leeper

(1) Q. As you know, a majority in Congress feels strongly that the current per se rule against vertical price fixing should be maintained. Indeed, two years ago the Justice Appropriations bill barred use of funds to overturn this judicial precedent. Will the Department, during the next year, seek to modify, limit, or overturn the per se rule against resale price maintenance?

A. The Justice Department will continue to treat resale price maintenance as illegal per se, in accordance with existing Supreme Court holdings. Former Assistant Attorney General J. Paul McGrath stated on several occasions the Department's commitment to enforce existing legal precedent regarding resale price maintenance unless and until the Supreme Court changes its interpretation of the Sherman Act as it relates to that practice. Indeed, on more than one occasion, he instructed management officials in both the Antitrust Division's Washington sections and its field offices to direct their staff attorneys that potential resale price maintenance violations should be analyzed as per se offenses in recommending whether an enforcement action should be brought. The Justice Department continues to adhere to this policy.

(2 A) Q. The guidelines state that agreements among retailers of a single brand of a product will be treated more leniently than agreements among sellers of different brands. Please reconcile this statement with United States v. General Motors Corp., 384 U.S. 127 (1966).

A. The Vertical Restraints Guidelines apply to nonprice restraints involving retailers of a single brand of a product. The Guidelines do not treat such agreements leniently. Rather, they evaluate such agreements on a case-by-case basis, in order to determine whether their likely effect is procompetitive or anticompetitive.

It is important to keep in mind that by their own terms, the Vertical Restraints Guidelines do not apply to any price restrictions, vertical or horizontal, interbrand or intrabrand. Similarly, they do not apply to agreements among distributors of more than one manufacturer's brands.

Thus, they do not deal with restraints that are still per se illegal under the antitrust laws.

On the other hand, the Vertical Restraints Guidelines do incorporate the most recent decisions of the Supreme Court. Today the Court is sensitive to the difference between interbrand and intrabrand competition. The decisions in the line of cases from Sylvania to ASCAP/BMI to Monsanto to NCAA recognize that competition can be enhanced by collaborative efforts. Thus, for example, the Sylvania decision reflects a recognition that a manufacturer's intrabrand restrictions may enhance its distributors' ability to compete successfully against the products of other manufacturers. In Monsanto, the Court explicitly recognized that distributors have an interest in the manufacturer's overall system of distribution and in the adverse effect that a disruptive distributor can have on that system. Similarly, NCAA and ASCAP/BMI indicate that joint activity that on the surface looks similar to classic per se behavior may on closer inspection be procompetitive. Discussions among distributors of the same brand is such behavior that upon closer examination is not anticompetitive.

Accordingly, the Guidelines reflect the current state of the law. This does not mean that they require the overruling of General Motors. In that case, the Court found the conduct to be purely horizontal and did not indicate that the agreement included dealers who only distributed GM products. Moreover, because of the high market share of GM at that time, the restrictions at issue there might very well have run afoul of the Vertical Restraints Guidelines.

(2 B) Q. Would the Department challenge a horizontal price fixing agreement among all the dealers of a particular brand of automobile in a metropolitan area?

A. The Department would challenge a collusive horizontal price-fixing agreement among all the dealers of a

particular brand of automobile in a metropolitan area. The Department believes that naked agreements among competitors to set prices should be reviewed as per se unlawful because they are almost certainly aimed at increasing price and restricting output, and they are highly unlikely to offer plausible competitive benefits. Accordingly, the Department is committed to prosecuting as per se unlawful collusive price-fixing agreements among competitors.

In recent years the Department has criminally prosecuted a large number of parties to per se illegal horizontal agreements. Specifically, during 1981-1984 the Department averaged 91 criminal antitrust prosecutions per year, more than twice the average of 38 cases per year for 1977-1980. In fiscal year 1984, the Department set a new one-year record by bringing 100 criminal antitrust prosecutions.

(2 C) . Section 4.224 of the Guidelines suggests that evidence of illegal intent derived from "low-level employees with little ability to influence corporate decisions" must be carefully evaluated to determine the intent of the parties. Do you believe this should be an evidentiary test in judicial proceedings or merely a guide to government attorneys in the exercise of prosecutorial discretion? Do you believe that similar caution about evidence of low-level employees is valid in cases involving non-antitrust conspiracies, particularly those involving organized crime or drug smuggling?

A. The Vertical Restraints Guidelines set forth current Justice Department enforcement policy with regard to nonprice vertical restraints. Accordingly, the discussion of evidence indicating an apparent anticompetitive purpose merely is a guide to government attorneys in the exercise of prosecutorial discretion; it does not purport to be an evidentiary test for use in judicial proceedings.

The Vertical Restraints Guidelines do not suggest that evidence of anticompetitive intent will be discounted. Indeed, they specifically provide that direct evidence of anticompetitive intent "may be a good indication of the likely consequences of the practice," and

may "be a strong indication that suppression of competition is the most likely explanation for the restraint." The reference to low-level employees merely is meant to point out that certain aggressive statements by junior officials may be no more than "puffing" or braggadocio that in no way represents the true intent of firms employing restraints. In contrast, where low-level employees' statements appear to be accurate reflections of the intent of firms employing vertical restraints, the Justice Department will view the statements as good indications of the likely consequences of vertical practices.

The Justice Department believes, of course, that evidence provided by low-level employees may be vital in securing convictions in cases involving non-antitrust conspiracies, such as organized crime or drug smuggling.

(2 D) Q. How much time did Antitrust Division personnel spend in preparing these guidelines? How much time did Antitrust Division personnel spend in investigating unlawful vertical restraints in the same time period?

A. The Justice Department allocated approximately 2 1/2 to 3 person-years to the drafting of the Vertical Restraints Guidelines. The Antitrust Division does not have records indicating the amount of time allocated by personnel to investigating vertical restraints during the time the Vertical Restraints Guidelines were being drafted.

The release of the Vertical Restraints Guidelines does not indicate a change in the Department's enforcement standards. The Department has taken and will continue to take the position that nonprice vertical restraint cases will be brought if they meet sound enforcement criteria. Enforcement criteria that the Department will apply are set forth in the Vertical Restraints Guidelines.

(2 E) Q. Has the Justice Department filed any cases regarding price and nonprice vertical restraints since January 1981. If so, please list them?

A. From January 1981 to the present, the Department has not brought any enforcement actions against price or nonprice vertical restraints. While the Department has investigated complaints in this area, it has not identified any nonprice or price vertical restraints that threatened significant competitive harm.

(2 F) Q. If a particular brand of a consumer product is so attractive to consumers that retailers could, for example, maintain a six percent price increase for approximately one year without suffering a significant loss in demand, would such brand constitute its own "market" for purposes of these guidelines?

A. Section 6.1 of the Vertical Restraints Guidelines explains that, as in the case of analyzing markets for mergers, applications of market definition procedures in vertical restraints cases normally will lead the Justice Department to include more than a single brand of a product in the market. In most cases, there is significant competition among competing brands of a product, and defining a product market to correspond to a single brand of a product would yield unrealistic answers to the Department's economic analysis. Accordingly, where different brands of a product are sold, the Department normally will not treat a single brand as constituting its own "market" for purposes of the Vertical Restraints Guidelines. In defining a product market, the Department generally will examine the effects flowing from a small but significant and nontransitory price increase applied to all brands of a product, rather than to any particular brand.

(3 & 4) Q. In a case where there has been a clear record of discrimination extending over a substantial period of time, resulting in a drastic reduction in minority hiring and promotions, how would you propose to remedy the results of this discrimination without taking race into account?

Do you believe it is appropriate for employers to target minorities and/or women for special recruitment efforts or training programs? If so, why are such race-conscious efforts permissible but other remedial efforts, including hiring goals, opposed by the Administration?

A. When an employer has been found to have engaged in unlawful employment discrimination, Title VII of the 1964 Civil Rights Act authorizes a court to order both "retrospective" and "prospective" relief. Retrospective, or "compensatory," relief typically consists of back pay, retroactive seniority and preferential hiring and promotion priorities designed to restore identifiable victims of the employer's discrimination to the position they would have attained but for the discrimination. Prospective relief is designed to prevent future discrimination. As the Supreme Court noted in Teamsters v. United States, 431 U.S. 324, 361 (1977), prospective relief "might take the form of an injunctive order against continuation of the discriminatory practice, an order that the employer keep records of its future employment decisions and file period reports with the court, or any other order 'necessary to insure the full enjoyment of the rights' protected by Title VII." As examples of the latter category of prospective relief, the Court cited orders designed to "prevent[ ] the deterrence of future applicants" such as "posting of job vacancies and job qualification requirements," "dissemination of information," and "public recruitment and advertising" (Id. at 365-366 n.51). This latter type of prospective relief -- recruitment and advertising -- is in my view a particularly important component of appropriate Title VII relief. For, in the typical Title VII case, the employer's recruitment methods consist of word-of-mouth notification of openings, visiting select schools and colleges, advertising in large, general circulation newspapers, and other measures that frequently by-pass the bulk of minority communities. It is therefore entirely appropriate under Title VII to require an employer to open up its recruitment process to

include measures designed to make employment opportunities known to potential minority applicants. Such measures might include recruitment visits to schools and colleges with substantial minority enrollments, as well as advertising in print and broadcast media having large minority audiences. Relief of this type would not require the employer to abandon other legitimate methods of recruitment, but rather would merely require the employer to enhance its recruitment measures in a manner designed to reach and attract minority candidates as well as non-minority candidates.

In our enforcement activities under Title VII, the Justice Department seeks to obtain the full panoply of permissible Title VII remedies, including both retroactive and prospective relief.

(5) Q. [illegible] such as additional recruiting efforts don't work? Do you oppose any other remedies that take race into account?

A. This question is difficult to answer because it is not clear from the question's wording or its context what is meant by the term "work." We note, however, that once an employer has complied fully and in good faith with an appropriate court decree ordering (1) retrospective, make-whole relief for all identifiable victims of the employer's discrimination and (2) such prospective relief as is necessary to prevent future unlawful discrimination, the employer's Title VII violation has been fully remedied. Classbased selection preferences, such as hiring or promotion quotas, are not necessary to remedy fully a Title VII violation, and, indeed, cannot properly be ordered by a court as part of Title VII relief. Moreover, classbased preferential treatment is objectionable for another reason: such preferences visit the remedial burden for the employer's discrimination on innocent non-minority third parties in order to prefer minorities who were not themselves victims of the employer's discrimination. Thus, far from remedying discrimination, remedial techniques such as quotas perpetuate that very evil, creating an entirely new class of victims. Accordingly, the Department of Justice opposes such measures.

(6) Q. How would you propose to remedy a case of a company or public agency that has refused to hire minorities for decades except at the very lowest level jobs and has refused to promote any minorities?

A. To fully remedy the Title VII violation described in this question, the Justice Department would seek a court order requiring the employer (1) to accord such retroactive relief (e.g., back pay, retroactive seniority, hiring or promotion preferences) as is necessary to restore all identifiable victims of the unlawful discrimination to the position they would have occupied but for the discrimination and (2) to undertake such affirmative measures (e.g., enhanced recruitment efforts) as are necessary to prevent future unlawful discrimination and to ensure that future hiring and promotional opportunities are made known to minority candidates as well as non-minority candidates.

(7) Q. Please describe the most directly relevant lower court opinions that support your interpretation of Firefighters Local Union No. 1784 v. Stotts, 104 S.Ct. 2576 (1984) i.e., that no goals for minority hiring can be a part of a court-ordered remedy in Title VII cases, as well as those that do not support your interpretation.

A. Immediately after the Supreme Court handed down its decision in Firefighters Local Union No. 1784 v. Stotts, 104 S.Ct. 2576 (1984), two federal district court judges overruled their earlier decisions protecting minorities from layoffs. Vulcan Pioneers, Inc. v. N.J. Dept. of Civil Service, 588 F. Supp. 732 (D.N.J. 6/21/84) (Sarokin, J.); United States v. City of Cincinnati, 35 FEP Cases 676 (S.D. Ohio 7/3/84) (Rubin, J.), appeal pending. Additionally, in United States v. Commonwealth of Virginia, Nos. 83-0933-R, 76-0023-R (E.D. Va. 1984), the court, in light of Stotts, required the parties to amend existing consent decrees containing race-based "recruitment objectives" and "hiring and promotion expectations" for the State Police and Department of Highways and Transportation. Two circuit courts of appeals have also agreed with the applicability of Stotts to litigated decrees, as opposed to decrees entered upon the consent of all parties. Turner v. Orr, No. 84-3266 (11th Cir. 4/18/85); Vanguards v. City

of Cleveland, 753 F.2d 479 (6th Cir. 1985), rehearing en banc denied 4/22/85. While the Department does not agree with the holdings of these two circuit courts insofar as they distinguished Stotts from the cases before them, we do believe their holdings are significant in the litigated decree context.

The Second Circuit, in EEOC v. Local 638, Nos. 1106-1111 (2d Cir. 1/16/85), petition for writ of cert. filed 4/16/85, has similarly distinguished Stotts on grounds we believe unsustainable, as has the District of Massachusetts in Deveraux v. Geary, C.A. 84-2181 (D. Mass. 11/7/84), appeal pending. Several other cases have been cited by our opponents as authority for a very limited and narrow reading of Stotts. Johnson v. Transportation Agency, Santa Clara County, No. 83-1532 (9th Cir. 12/4/84); Kromnick v. School District of Philadelphia, 739 F.2d 894 (3d Cir. 1984); Van Aken v. Young, 750 F.2d 43 (6th Cir. 1984); Wygant v. Jackson Board of Educ., No. 82-1746 (6th Cir. 10/25/84), pet. for cert. granted. Each of these decisions, however, correctly distinguished Stotts as not applying to voluntary affirmative action plans, such as those contained in collective bargaining agreements, in contrast to court-ordered relief under Section 706(g) of Title VII, 42 U.S.C. §2000e-5(g), to which Stotts does apply. The Supreme Court has recently agreed to review the Sixth Circuit's decision in Wygant, supra, which presents the issue of the constitutional requirements for affirmative action plans of public employers.

(8) Q. The Washington Post recently reported that the Office of Management and Budget had ordered the Department of Housing and Urban Development to stop collecting information on racial makeup of Americans receiving housing benefits -- data that had been used to discover discrimination. What is the Justice Department's position on this type of data collection? Do you agree with OMB's termination of this program.

A. We are only familiar with one racial data collection issue that the Department of Housing and Urban Development (HUD) has raised with the Office of Management and Budget (OMB). There, we understand that OMB approved a proposed HUD form which provides for the collection of racial data, but objected to data in a different proposed HUD form as duplicative or otherwise unnecessary.

Thus, we understand that this particular issue does not involve a decision whether to collect racial data, but how much such data should be collected and in what detail.

With respect to HUD's desire to collect the particularized racial data on one specific form, we advised HUD of our view that Title VI of the Civil Rights Act of 1964 neither prohibited nor required the collection of such particularized data. Accordingly, if OMB objected to the form in question on Title VI grounds we would, at HUD's request, inform OMB such an objection is misplaced, in our view. If OMB objects to the form because it believes it is duplicative or otherwise conflicts with paperwork reduction requirements, we would view such a dispute as a matter for resolution between HUD and OMB.

(9) Q. According to your written testimony, the Federal prison system is currently experiencing a 34.1 percent rate of overcrowding. The President's budget request includes some funds for prison construction, although some believe your request is inadequate. What are you doing to come up with alternatives to putting people in prison? What are the specific initiatives you have in mind to deal with current overcrowding and the likely increase in the prison population because of recent reforms in the federal criminal code?

A. The Federal Bureau of Prisons embarked on a multi-faceted plan in 1982 to increase the inmate capacity of the Federal Prison System. Our efforts have included the acquisition and conversion of surplus properties to correctional facilities such as the Federal Prison camp at Duluth, Minnesota, the Federal Correctional Institution, Loretto, Pennsylvania and the Federal Medical Center in Rochester, Minnesota. With funding approved through 1985, we have added or will add new housing units at 22 existing institutions. Finally, the new Federal Correctional Institution (FCI) in Phoenix, Arizona, will be opened this year. We are pursuing the acquisition of a site for the southeastern FCI and are actively seeking to locate suitable sites for the two northeast FCI's.

Taken together, currently approved expansions and those requested in the 1986 budget will eventually increase the rated capacity of the Federal Prison System by 5,900 beds. We have recently completed a new multi-year plan for facilities expansion

through 1990. With currently approved projects and those identified for future year budget requests, our objective is to keep pace with the continuing increases in the inmate population and to substantially reduce overcrowding.

Another activity which assists in reducing institutional overcrowding is our Community Treatment Center (CTC) program. Our policy is to use CTC's to the maximum level possible which is consistent with public safety. During the past three years, the Bureau has increased inmate participation in Community Treatment Centers from an average daily population of 1,400 to 2,400 inmates and seeks to further increase the program in 1986 to 2,700 [illegible].

The recently enacted Comprehensive Crime Control Act of 1984 will in all likelihood further increase the inmate population. Two factors exist which make it impossible to estimate the long-term impact at this time. First, for the several new Federal offenses created by the Act, we must wait for the full implementation of investigative and prosecutorial guidelines and identification of resources directed at these crimes. Secondly, the sentencing reform provisions of the Act will probably have the most significant long term impact on the inmate population level. Since the new Sentencing Guidelines Commission does not submit its recommended guidelines to the Congress until 1986, it would be premature for the Bureau of Prisons to make predictions at this time. We will continue to collect and analyze data in order to provide predictions of the Act's impact on the Federal Prison System.

(10) Q. I understand that the House Subcommittee on Human Resources requested a Justice Department investigation of the circumstances surrounding the payment of consulting fees to James M. Wootten, now Deputy Administrator of the Office of Juvenile Justice. He was apparently paid at an annual rate of $60,000, based in part on his claim that this was his salary as President of the Family Security Foundation. However, there have been questions raised about the accuracy of this claim. Could you please report to the Committee as to whether Mr. Wootton's application and consulting arrangements are proper and comply with all relevant laws and regulations?

A. [illegible] Professional Responsibility in June, 1984. That office conducted

an investigation, interviewing all pertinent parties, and prepared a report of its findings. The report was reviewed by the Department and it was determined that no further action was warranted. The matter is now closed.

(11) Q. Your Department has now assumed prime responsibility for the search for the Nazi war criminal, Joseph Mengele. What kind of a priority are you giving to this matter?

A. I consider the initiative to locate Nazi war criminal Joseph Mengele to be a very high priority. I have directed that the Office of Special Investigations in the Criminal Division and the U.S. Marshals Service vigorously pursue all leads and cooperate closely with West Germany, Israel and others in this investigation.

(12) Q. In connection with the Mengele investigation, what kind of cooperation is the Department receiving from the State Department, the Pentagon, and the Intelligence agencies?

A. The cooperation from the Defense Department, the State Department, CIA, NSA and others has been outstanding. There is a clear commitment among all of these organizations and an understanding of the President's desires that we take whatever steps necessary to locate Dr. Mengele.

(13) Q. Are you willing to use your influence with the President to ensure that each of these agencies give this matter a high priority?

A. I don't expect any change in the high priority already devoted to this matter. However, if in the highly unlikely event that I could not prevail on another Department of Government to provide the necessary assistance, I would, of course, raise the matter to the attention of the President and his staff.

APPENDIX 1

Department of Justice

STATEMENT

OF

JAY B. STEPHENS
DEPUTY ASSOCIATE ATTORNEY GENERAL

BEFORE

THE

SUBCOMMITTEE ON CRIMINAL JUSTICE
HOUSE JUDICIARY COMMITTEE
HOUSE OF REPRESENTATIVES

CONCERNING

IMPLEMENTATION OF THE SENTENCING REFORM ACT

ON

MARCH 27, 1985

Mr. Chairman, the Department of Justice appreciates the continuing interest of the Subcommittee in the reform of the federal sentencing system. We understand that the Subcommittee wishes to review this morning the progress of the Executive and Judicial Branches of Government in their efforts to help implement the Sentencing Reform Act of 1984. The two Branches have been working, both jointly and separately, towards laying the basis for the implementation of the Act.

The immediate need is to achieve a functioning Sentencing Commission. Under the Act the Sentencing Commission is tasked with developing sentencing guidelines for all federal crimes. These guidelines will then be sent to Congress for review before the rest of the new sentencing system goes into effect. The creation of the Commission, however, requires two things: the careful selection of well-qualified members, and the appropriation of adequate funds for its operation.

The selection of the members of the Commission is a process in which the Executive Branch has been actively engaged. Under the Act, the President is to appoint the Chairman and three other voting members of the Commission "after consultation with representatives of judges, prosecuting attorneys, defense attorneys, law enforcement officials, senior citizens, victims of crime, and others interested in the criminal justice process." The three other voting members of the Commission are to be appointed by the President from the ranks of federal judges "after considering a list of six judges recommended to the President by the Judicial Conference of the United States." All seven of the appointments are to be submitted to the Senate for its advice and consent.

The Department of Justice, upon direction of the President, has been in the process since last November of consulting with the designated kinds of organizations and individuals with regard to appropriate candidates for the Commission. Representatives of the Office of the Associate Attorney General and of the Office of

Legislative and Intergovernmental Affairs have appeared before several organizations to solicit their suggestions and have written to numerous other organizations and individuals. In all, over three dozen organizations have been asked to suggest the names of individuals whom they believe well qualified for membership on the Commission, or at least to suggest the kinds of backgrounds that they would wish to find in candidates for membership. Nearly all of the organizations have responded, either with specific recommendations or general suggestions, and numerous suggestions have also been volunteered by other organizations and individuals.

All of the suggestions have been carefully considered. The process is still continuing, but the list of candidates has been reduced to a point that it would now be very useful to have the recommendations of the Judicial Conference before formally interviewing the remaining candidates and making final recommendations to the President for selection. It has become apparent that the backgrounds of all of the remaining candidates should now be reviewed concurrently, given the statutory necessity of assuring that no more than four members are from any one political party, and given the practical desirability of assuring that the seven appointees will be able to bring different backgrounds and qualities to the Commission. We encourage the Judicial Conference to submit the list of its candidates to the President soon; when it arrives the final selection process will take place and the names will be sent to the Senate.

After confirmation of the first members, the Commission will need to assemble a well-qualified staff, start collection of the empirical data it will need, and begin the complex analyses necessary to the preparation of guidelines designed to fulfill the specific sentencing purposes identified by the Congress. The Commission will have a tremendous amount of work to do within a short period of time. Under the legislation, the Commission's

guidelines are to be completed and presented to the Congress by April 12, 1986; after Congressional review and possible modification, they are to go into effect in October of 1986. To accord with this timetable, the Commission will need to begin its work promptly upon the confirmation of the first members.

Before the Commission may begin its work, however, it will require funding. Ideally, funds for the Commission should be appropriated before the members are appointed. The problem is that there is no Commission in existence to initiate the request for an appropriation; the Executive Branch is not in a position to transmit such a request to the Congress since the Commission is a Judicial Branch agency; and no agency in the Judicial Branch believes it has the authority to submit a request on behalf of the Commission. It appears that the best resolution of this problem lies in the initiation of a bill by members of Congress who are interested in sentencing reform to provide emergency funding for the Commission. A relatively modest outlay would permit the Commission to hire a staff and begin its operations; the Commission could then go back to the Congress with a more detailed, more carefully considered, request for longer-term funding.

In short, funding for the Commission is an immediate problem, and the Administration strongly supports Congressional efforts to obtain a prompt appropriation.

In anticipation of the Commission's work, there have been some other efforts to assist in the implementation of the new sentencing system. Noteworthy among them is the effort undertaken by the Parole Commission to lay the groundwork for a Sentencing Commission library. The research unit of the Parole Commission has prepared an exhaustive bibliography encompassing well over 300 publications relating to the sentencing process, and has made most of the referenced materials available to serve

as the nucleus of the Commission's library. This should greatly facilitate the initial work of the Commission and its staff.

Finally, the Department of Justice has been working closely with the Administrative Office of the United States Courts to review what technical and other minor modifications might appropriately be made to the Sentencing Reform Act to help assure its smooth operation. The result of this effort is a draft version of a technical amendment package -- a package consisting primarily of changes first suggested by the Administrative Office. Both organizations have attempted to assure that the package of amendments is genuinely technical or otherwise minor in nature, and have tried to avoid the introduction of alterations that might prove at all controversial. Some additional changes may be made in the draft upon further Executive Branch and Judicial Branch review, but we hope to have it forwarded for consideration by the Congress within the next week or so.

Again, we appreciate the continuing interest of the Subcommittee with regard to improving the sentencing process.

APPENDIX 2

BACK-UP DATA
COMPREHENSIVE CRIME CONTROL ACT

Organization	1985 Pos.	1985 FTE	1985 Dollars	1986 Pos.	1986 FTE	1986 Dollars
Justice Management Division...	12	3	$610,000*	12	12	$2,500,000
Criminal Division.....	28	7	400,000	28	28	1,519,000
U.S. Attorneys.....	162	41	1,800,000	162	162	9,564,000
U.S. Marshals.....	315	110	6,622,000	315	315	12,056,000
FBI.....	148	37	1,500,000	148	148	6,600,000
DEA.....	156	39	2,700,000	156	156	10,443,000
FPS.....	...	...	900,000	...	...	2,049,000
OJP.....	16	12	1,414,000*	16	16	3,269,000
FEWS.....	...	...	1,300,000	...	...	2,000,000
Assets Mgt.....	...	...	5,000,000	...	...	20,000,000
TOTAL.....	837	249	22,246,000	837	837	70,000,000

* These dollars in 1985 are derived through reprogrammings in the General Administration appropriation (JMD) and the Justice Assistance appropriation (OJP). All other 1985 dollars are derived from supplementals.

- Justice Management Division resources are necessary to establish reporting and subsidiary systems for the new criminal fines collections and assets management.

- The Criminal Division projects increased workload in nearly all of its programs. The changes in criminal statutes are expected to create a need for policy guidance, advice and assistance in developing applicable case law.

- U.S. Attorney workload will be effected in the areas of collecting criminal fines, detention and bail hearings, forfeitures, foreign currency transactions, violent crimes and serious non-violent crimes.

- Resources for the U.S. Marshals Service are required to implement the portions of the Act that are applicable to child custody arrangements for protected witnesses, bail reform and asset forfeiture/management.

- The FBI has new and expanded jurisdiction in the White Collar Crime, Terrorism and Organized Crime programs which will require additional resources. The major areas effecting workload are expected to be Computer fraud, Counterfeiting and Credit Card fraud. Expanded workload is also projected in the areas of destruction of energy facilities and labor racketeering.

- Resources are required for DEA to establish the Administrative Revocation Program which would provide for additional investigations of practitioner registrants whose activities are suspected of being inconsistent with public interest.

- The Federal Prison System resources are necessary to accommodate the daily care of additional inmates resulting primarily from the bail reform provisions.

- For the Office of Justice Programs, the resources are needed to cover the new Federal Public Safety Officers' Benefits provision, administer the Crime Victims Fund, and establish a minimum level Emergency Federal Law Enforcement Assistance program (i.e., to support efforts like the investigation of the Atlanta child murders).

- Resources are requested for the Fees and Expenses of Witnesses program to satisfy requirements in the Protected Witnesses activity in the areas of child custody, child support, custody litigation and pyschological evaluation. In addition, funding is being sought to establish a "fund" for victims of crimes committed by persons entered into the Department's protected witnesses program.

- For assets management, the amounts are necessary to establish an account to handle receipts associated with seized/forfeited assets and expenses incurred in the management and disposition of the assets.

The CHAIRMAN. We have a statement from Senator Simon which I will insert in the record at this point.

[The statement of Senator Simon follows:]

PREPARED STATEMENT OF SENATOR PAUL SIMON

The Department of Justice has responsibility for a myriad of programs responsible for the quality of our lives—for the social justice and fairness of our lives. I hope this has been the guiding force in establishing the proposed FY 86 budget for the Department. My concern is that fairness and justice have not been the guiding force.

One program is the Juvenile Justice activities. I am concerned that the National Center for Missing and Exploited Children, one part of the Juvenile Justice programs will suffer from the revised priorities apparent in the FY 86 budget. The entire program which had received $10 million in FY 85, will now be cut to $3.3 million. The costs of operating the center are higher than that alone. In addition, research, the development of state models for missing children programs, among other activities will cease.

I use these activities as an example of the concerns I have with the realignment of the Department of Justice FY 86 budget and therefore, the realignment of their priorities.

The CHAIRMAN. We will keep the record open for a period of 2 weeks for statements and questions of other Senators and additional questions that may be propounded.

Is there anything else you would like to say now before we adjourn?

Attorney General MEESE. Mr. Chairman, I would like to thank you and the members of the committee for your generous welcome today. I look forward to continuing to work with this committee in the future.

The CHAIRMAN. We now stand adjourned.

[Whereupon, at 12:35 p.m., the committee was adjourned.]

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